

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804
: :
NATIONAL PRESCRIPTION :
OPIATE LITIGATION :
: **VOLUME 15**
CASE TRACK THREE : JURY TRIAL
: (Pages 3781 - 4028)
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: :
: October 25, 2021
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Heather K. Newman, RMR, CRR
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
216.357.7035.

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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1 (In open court at 8:43 a.m.)

08:43:25 2 COURTROOM DEPUTY: All rise.

08:43:26 3 THE COURT: Okay. Everyone can be seated.

08:43:45 4 (Brief pause in proceedings).

08:43:53 5 THE COURT: All right. I've read everyone's briefs
08:43:57 6 and the cases that both sides cited. I have concluded that the
08:44:08 7 appropriate thing to do is bring each of the jurors in
08:44:15 8 individually as I did last Friday, instruct each juror that
08:44:23 9 they are completely -- to completely disregard anything that
08:44:29 10 former Juror No. 4 showed them or said to them and make sure
08:44:34 11 they can follow that instruction, and then ask them if anything
08:44:41 12 that that juror said or did leads them to believe they can no
08:44:48 13 longer be a fair and impartial juror. Anyone who says yes is
08:44:53 14 out. I'm not going to make any attempt to rehabilitate them.

08:44:57 15 I think as an added precaution I'll ask them that if
08:45:01 16 anything else that has occurred in the roughly one month since
08:45:05 17 they've been sworn causes them to doubt whether they can be
08:45:08 18 fair and impartial. And then assuming we have an adequate
08:45:12 19 number of jurors, to proceed.

08:45:18 20 The cases that the defendants cited all deal with
08:45:22 21 situations after the fact when the extraneous information or
08:45:31 22 independent tests that a juror did improperly came to light
08:45:36 23 after the verdict. And also in those situations the extraneous
08:45:48 24 information and/or test went to the heart of the case, and it
08:45:53 25 was clearly prejudicial. It went -- you know, it went to the

08:45:56 1 heart of the case. The speed of the automobile, the cause of
08:45:59 2 the fire, et cetera. It was the -- what the offending juror
08:46:06 3 had did went to the essence of the issues in dispute.

08:46:13 4 This case is not going to be decided on Narcan or
08:46:17 5 naloxone. I don't recall either side -- either side, the
08:46:20 6 plaintiffs or any of the four defendants mentioning this in
08:46:24 7 opening statement, and I don't think anyone's going to mention
08:46:26 8 it ---

08:46:28 9 Robert, I don't think this mic's on. Can you take
08:46:32 10 care of it, please.

08:46:33 11 I don't think any of the defendants are even going to
08:46:35 12 mention it in final argument. It's extraneous and it's
08:46:44 13 irrelevant as to whether or not the plaintiffs can prove their
08:46:47 14 public nuisance claims against any or all of the defendants.
08:46:51 15 And I'm confident from the answers of the jurors that most of
08:46:53 16 them ignored it, what this juror -- ex-Juror No. 4 said.

08:47:06 17 So it's clear from the case law a mistrial in the
08:47:12 18 middle of a trial is the very last resort, and if there are any
08:47:17 19 measures short of mistrial that the judge feels can address the
08:47:20 20 issue, that's what the judge should do. And so that's what I'm
08:47:24 21 going to do.

08:47:31 22 MS. SULLIVAN: And, Your Honor --

08:47:32 23 THE COURT: I also want to point out what should be
08:47:35 24 obvious. One of my responsibilities is the preservation of
08:47:40 25 judicial resources and the most effective and efficient use of

08:47:45 1 judicial resources. It took us more than two months to pick
08:47:48 2 this jury. I've been, you know, in the courtroom on one side
08:47:53 3 or the other for 45-plus years. I've never seen a more
08:47:58 4 diligent or attentive jury in all my 45-plus years.

08:48:01 5 I have no idea what they're going to do at the end, but I
08:48:04 6 know it's going to be based on attention and detail and doing
08:48:08 7 the right thing. Because they're paying attention all the
08:48:13 8 time. Every time I look at them, they are focused. All right?
08:48:16 9 They're not daydreaming. They're not wandering. They're not
08:48:20 10 dozing. Trust me, I've had that. All right? So -- and this
08:48:25 11 trial was postponed twice because of COVID.

08:48:28 12 I mean, none of the cases anyone cited, of course,
08:48:32 13 dealt with trials that were conducted during COVID because
08:48:34 14 fortunately that never happened before. You know, a lot of
08:48:39 15 people said we couldn't pull this off and it was a foolish
08:48:45 16 thing to start this trial and try to do it when we did. I felt
08:48:48 17 we could do it safely. So far we haven't had any issues. No
08:48:53 18 one has any idea what the course of this pandemic is going to
08:48:58 19 be. Just about everyone's thoughts, predictions, prophecies
08:49:04 20 where been wrong. Certainly mine were. So, since no one can
08:49:09 21 predict the future and we've done pretty well so far, we're
08:49:13 22 halfway through, that's another reason to go forward and not
08:49:17 23 try to redo it. Because given my professional commitments -- I
08:49:25 24 mean, I have a whole lot of criminal defendants who have been
08:49:27 25 waiting for over a year for a trial and they've been locked up

08:49:32 1 and I've got a constitutional obligation to give them their
08:49:35 2 trials. Everyone else has professional obligations, personal
08:49:41 3 obligations. I have no idea when we could retry this, and this
08:49:43 4 is a case of national importance because it's a Bellwether for
08:49:51 5 the pharmacies to really whether or not the plaintiffs' theory
08:49:55 6 of liability will resonate with a jury. The plaintiffs think
08:49:59 7 it will; the defendants think it won't. Well, we'll find out.
08:50:02 8 And it's important to find out, and so we're going to make
08:50:05 9 every effort to do that.

08:50:07 10 So that's what I plan to do and then assuming -- I
08:50:11 11 mean, we've got 13 jurors now. We have way more than we need.
08:50:16 12 If we loss one or two, we loss one or two, I really don't think
08:50:23 13 we'll' loss any, but if any juror who says I doubt -- you know,
08:50:27 14 I have any concern I can be fair and impartial is going to be
08:50:29 15 out. I'm not going to endeavor to rehabilitate anyone if an
08:50:32 16 answer is given like that. So that's what I plan to do.

08:50:34 17 And then -- then we'll proceed with the plaintiffs'
08:50:40 18 next witness. But I appreciate everyone's very thorough
08:50:44 19 briefing.

08:50:46 20 MS. SULLIVAN: Your Honor, I understand you've ruled,
08:50:51 21 so just briefly, this is an issue that we do not believe can be
08:50:51 22 cured as acknowledged by the plaintiffs' counsel. Everybody
08:50:54 23 was affected. Clearly Juror No. 4 believes --

08:50:57 24 THE COURT: Ms. Sullivan, you -- you don't need to say
08:50:59 25 anything further. I understand -- I mean, you've made your

08:51:02 1 argument. All right?

08:51:03 2 MS. SULLIVAN: Thank you, Judge. Thank you.

08:51:06 3 THE COURT: I just, you know, I disagree, but, you
08:51:08 4 preserved your issue.

08:51:12 5 MR. LANIER: And, Your Honor, for the record I put
08:51:13 6 this into writing in front of the Court, but in the midst of
08:51:19 7 trial to figure this all out and the immediate reaction, having
08:51:23 8 now a chance to research Sixth Circuit law, I speak on behalf
08:51:29 9 of the plaintiffs saying that this is not an incurable
08:51:32 10 situation, and we believe if you polled the jury, as you're
08:51:35 11 saying, as long as the jury commits that they can be fair and
08:51:38 12 independent, then we are absolutely fine proceeding. And I
08:51:42 13 don't want anything I said on Friday to misdirect the Court or
08:51:46 14 any appellate court in that regard.

08:51:49 15 THE COURT: That's okay. I mean, Mr. Lanier, you said
08:51:53 16 what you said. I encouraged everyone to think about it,
08:51:56 17 reflect, talk to their clients. Everyone did that. So
08:52:01 18 let's -- I mean, as I have. I mean, I said some things. I
08:52:07 19 thought about them some more. I've looked at some cases. Read
08:52:11 20 what everyone said, and then that's the way to make a decision
08:52:15 21 of this -- of consequence to take some time to reflect on it.
08:52:22 22 And that's what everyone's done and I appreciate that.

08:52:24 23 So I think what I will do, I'll ask Mr. Pitts to bring
08:52:28 24 in the jurors one by one as we did on Friday.

08:52:41 25 It's actually a couple minutes before 9:00 so I'll

08:52:43 1 wait till 9:00. Good point.

08:52:44 2 Since we have a couple minutes, I don't know if anyone
08:52:49 3 did any further work on the exhibits. I think -- what have I
08:52:55 4 got here? There was a list from the plaintiffs for
08:53:08 5 Tasha Polster. Two pages, one and a half pages.

08:53:11 6 Do the defendants have any objection to any of those?

08:53:17 7 MS. SWIFT: Your Honor, Kate Swift for Walgreens. We
08:53:20 8 do have a couple of objections of that. I'm happy to walk
08:53:21 9 through those right now.

08:53:21 10 THE COURT: All right. If we can do it quickly, I'll
08:53:22 11 take them up. If not, we'll put them off.

08:53:23 12 Which ones?

08:53:24 13 MS. SWIFT: Sure. The first one is P19927, which is
08:53:28 14 Ms. Polster's personnel file, which was marked highly
08:53:32 15 confidential for perhaps obvious reasons. We don't believe --

08:53:34 16 THE COURT: Wait a minute. Hold it. One -- all
08:53:36 17 right. Ms. Swift, I'm sorry, I've got on the list the
08:53:41 18 plaintiffs gave me, 19927 says an investigation report of
08:53:45 19 Douglas Winland.

08:53:47 20 MS. SWIFT: I'm looking at the list that plaintiffs
08:53:49 21 gave me.

08:53:49 22 THE COURT: All right. Well, look, this isn't working
08:53:52 23 well already, so, see if you can get this straightened out and
08:53:55 24 then --

08:53:56 25 MS. SWIFT: Sure. Happy to.

08:53:57 1 THE COURT: -- I'll do it another time. I mean,
08:53:59 2 I'm -- I've got a list that was given to me last week by the
08:54:02 3 plaintiffs, and the first one is 19927. It says investigation
08:54:07 4 report of Douglas Winland.

08:54:09 5 MS. SWIFT: We object to that one too, but I don't
08:54:11 6 have that on the list right in front of me.

08:54:13 7 THE COURT: All right, look --

08:54:15 8 MS. SWIFT: We'll work with the plaintiffs on it.

08:54:17 9 THE COURT: I'll give this back to the plaintiffs.
08:54:19 10 Figure it all out and we'll deal with it another time.

08:54:23 11 MR. WEINBERGER: Your Honor, while we have some
08:54:25 12 time --

08:54:25 13 THE COURT: Well, let me --

08:54:27 14 MR. WEINBERGER: I'm sorry --

08:54:28 15 THE COURT: So that needs work.

08:54:30 16 What about with Dr. Alexander? Maybe we can take care
08:54:34 17 of that. Any exhibits with Dr. Alexander.

08:54:39 18 MS. SWIFT: Your Honor, before we move off
08:54:41 19 Ms. Polster, I just want to make clear. Defendants have some
08:54:43 20 exhibits that we'd like to offer with her as well.

08:54:45 21 THE COURT: Well, sure you do. But have you gone over
08:54:46 22 those with the plaintiffs?

08:54:47 23 MS. SWIFT: I have sent them to the plaintiffs, yes,
08:54:51 24 Your Honor.

08:54:51 25 THE COURT: See if you can work this out, get me a

08:54:52 1 list of the exhibits that the plaintiffs are going to offer, a
08:54:55 2 list the defendants are going to offer and just some sort of a
08:54:57 3 mark where anyone objects and then I'll go through those.

08:55:01 4 MS. SWIFT: We will, Your Honor. Thank you.

08:55:02 5 THE COURT: All right. What about Dr. Alexander?

08:55:08 6 MR. WEINBERGER: We have no exhibits to move --

08:55:09 7 THE COURT: Okay.

08:55:12 8 MR. WEINBERGER: -- into evidence.

08:55:13 9 THE COURT: That's easy.

08:55:14 10 What the defendants?

08:55:18 11 MS. FIEBIG: Giant Eagle has two exhibits that we were
08:55:18 12 hoping to admit through Dr. Alexander. We've shared them with
08:55:19 13 plaintiffs.

08:55:19 14 THE COURT: Let me see them, Ms. Fiebig.

08:55:24 15 With two, we may be able to get those done quickly.

08:55:26 16 Any of the other defendants have anything with
08:55:29 17 Dr. Alexander?

08:55:33 18 MR. SWANSON: No, Your Honor.

08:55:34 19 THE COURT: All right. Well, we should be able to
08:55:36 20 take a quick look at these two.

08:55:46 21 All right. We've got Exhibits 1328 and 1329.

08:55:53 22 They're -- looks like government hearings. I don't know, are
08:55:59 23 you proposing to admit the whole thing, or just the portion of
08:56:04 24 Dr. Alexander's testimony?

08:56:07 25 MS. FIEBIG: Yes, we have the page numbers that we can

08:56:10 1 offer for admission.

08:56:12 2 MR. WEINBERGER: Your Honor, these are impeachment
08:56:14 3 materials and shouldn't be admit into evidence. This is prior
08:56:20 4 testimony of his that they impeached him on or attempted to
08:56:23 5 impeach him on. His testimony in court is the testimony to --
08:56:28 6 for the jury to consider, not --

08:56:30 7 THE COURT: Well, I tend to agree. I mean, you
08:56:32 8 cross-examined him on these and he didn't -- he didn't disavow
08:56:37 9 them.

08:56:38 10 MS. FIEBIG: He didn't disavow them, but we think that
08:56:41 11 his --

08:56:42 12 THE COURT: Do you think they're fundamentally
08:56:44 13 different than what he said? Anything in here is fundamentally
08:56:47 14 different? I think there is a rule of evidence that a prior
08:56:52 15 statement that's directly contradictory may be admissible under
08:56:57 16 certain circumstances, but I don't -- didn't recall that.

08:57:00 17 MS. FIEBIG: That's right, Your Honor. And that's
08:57:03 18 801(d)(1)(A). We do think that this is an inconsistent
08:57:06 19 statement that he provided in a sworn hearing.

08:57:07 20 THE COURT: Well, what specifically -- what page of --
08:57:11 21 you know, let's start with 1328. Give me a page and where you
08:57:17 22 think something was directly inconsistent.

08:57:17 23 MS. FIEBIG: Sure. In 1328, on Page 41, which is
08:57:25 24 Bates stamped 132800045 --

08:57:29 25 THE COURT: Hold it, please. Well, Page 41 of the --

08:57:39 1 MS. FIEBIG: The page number at the top.

08:57:40 2 THE COURT: All right. I've got it. Now, what
08:57:42 3 statement?

08:57:42 4 MS. FIEBIG: So you'll see starting in the middle of
08:57:45 5 the page he testified, "In my testimony I'd like to mention
08:57:47 6 three important steps to address this problem." He started
08:57:49 7 with prescribing practices.

08:57:52 8 THE COURT: Right.

08:57:53 9 MS. FIEBIG: Talked about addiction. And then how
08:57:57 10 people should properly dispose of opioids.

08:58:05 11 THE COURT: Yeah. Yes. Well, I don't see anything
08:58:09 12 directly contradictory to what he said in court.

08:58:13 13 MS. FIEBIG: It's not that it's directly contradictory
08:58:16 14 to what he said in court, it's that the statements that he
08:58:18 15 made --

08:58:19 16 THE COURT: Well, that's the only basis that you could
08:58:21 17 possibly admit it. So, without that, it's not coming in.

08:58:23 18 All right. The next document is 1329? What's
08:58:28 19 directly contradictory there?

08:58:29 20 MS. FIEBIG: But there's actually a couple of other
08:58:31 21 pages in 1328.

08:58:32 22 THE COURT: All right.

08:58:32 23 MS. FIEBIG: And I'm happy to provide them to
08:58:34 24 plaintiffs and the Court --

08:58:36 25 THE COURT: All right. If you can -- if you can show

08:58:39 1 something in here that is directly contradictory to what he
08:58:43 2 said, I'll consider that, and that alone. So show it to the
08:58:48 3 plaintiffs and if -- you know, the plaintiffs agree, fine, if
08:58:51 4 they disagree, then I'll deal with it.

08:58:53 5 MS. FIEBIG: Understood, Your Honor.

08:58:54 6 THE COURT: But unless it's directly contradictory it
08:58:59 7 doesn't come in.

08:59:10 8 All right. And, Mr. Weinberger, you had something you
08:59:19 9 wanted to raise.

08:59:19 10 MR. WEINBERGER: Your Honor, this motion we filed a
08:59:21 11 motion to admit.

08:59:22 12 THE COURT: I saw that -- I'll wait -- this was
08:59:24 13 something I was hoping the parties could work out with
08:59:30 14 Special Master Cohen. I don't know, I'd still like him to work
08:59:33 15 this out. If he can't, I'll just have to deal with it, so, I
08:59:37 16 don't know if the defendants are objecting to it or not or on
08:59:41 17 what basis, but I had directed -- I think there's several
08:59:44 18 issues that I wanted you to --

08:59:46 19 MR. WEINBERGER: Right.

08:59:46 20 THE COURT: -- work on with Special Master Cohen.
08:59:49 21 This was one of them. There were at least two others.

08:59:54 22 MS. FIEBIG: Understood, Your Honor.

08:59:54 23 MR. WEINBERGER: The other was the IMS contracts, and
08:59:57 24 I have --

08:59:58 25 THE COURT: IMS CSA.

09:00:01 1 MR. WEINBERGER: Right. I have had discussions with
09:00:02 2 them about that.

09:00:03 3 THE COURT: A stipulation or instruction on settlement
09:00:06 4 agreements.

09:00:06 5 MR. WEINBERGER: Right. We submitted a response. We
09:00:10 6 haven't had a chance to discuss our response with the other
09:00:12 7 side, and as to the CSA, the general additional instructions on
09:00:18 8 the CSA, we are going to file this morning our own version.
09:00:23 9 Again, we will discuss --

09:00:26 10 THE COURT: All right. Well, I want you to keep
09:00:27 11 working on it.

09:00:28 12 MR. WEINBERGER: -- with counsel.

09:00:29 13 THE COURT: Use Special Master Cohen to assist you.
09:00:31 14 If parties can't agree, obviously I'll decide it.

09:00:36 15 MR. DELINSKY: And, Your Honor, we'll be putting in
09:00:38 16 something shortly on the IMS today.

09:00:40 17 THE COURT: All right. Well, you can file it, but
09:00:42 18 again, I want you to try and -- you ought to be able to come
09:00:45 19 together on all three of these.

09:00:49 20 Okay. Now we'll start bringing in the jurors, please.
09:00:56 21 One by one.

09:02:03 22 (Brief pause in proceedings).

09:02:15 23 (Juror returned to courtroom).

09:02:15 24 THE COURT: Good morning, ma'am.

09:02:17 25 You can take your mask off. This will be very quick.

09:02:20 1 I hope you had a good weekend.

09:02:22 2 First, I am instructing you that you are to completely
09:02:27 3 disregard anything that former Juror 4 showed to you or said to
09:02:34 4 you.

09:02:35 5 One, it was obviously improper that she did it, and
09:02:39 6 two, it has no relevance to the case. So can you follow that
09:02:43 7 instruction?

09:02:43 8 A JUROR: Yes.

09:02:44 9 THE COURT: Okay. Second, is there anything about
09:02:48 10 what former Juror No. 4 showed you or said to you that casts
09:02:54 11 any doubt in your mind as to whether you can continue to be a
09:02:58 12 fair and impartial juror in this case?

09:03:01 13 A JUROR: No. It didn't really change anything about
09:03:03 14 what I'm thinking about the case.

09:03:05 15 THE COURT: Okay. And just to be safe, is there
09:03:09 16 anything else that has occurred in the roughly one month since
09:03:14 17 I gave you the oath and swore you in with your fellow jurors
09:03:18 18 that casts any doubt in your mind as to whether you can
09:03:21 19 continue to be fair and impartial in this case?

09:03:23 20 A JUROR: No.

09:03:24 21 THE COURT: Okay. Thank you.

09:03:25 22 A JUROR: Thank you.

09:03:27 23 (Juror excused from courtroom).

09:04:10 24 (Juror returned to courtroom).

09:04:10 25 THE COURT: Good morning, ma'am. You can take your

09:04:12 1 mask off for a minute. This won't take long.

09:04:15 2 A JUROR: Good morning.

09:04:16 3 THE COURT: Hope you had a good weekend.

09:04:18 4 A JUROR: I did. Thank you.

09:04:19 5 THE COURT: I am instructing you that you must
09:04:21 6 completely ignore, disregard not consider anything that former
09:04:27 7 Juror No. 4 showed you or said to you.

09:04:30 8 Can you follow that instruction?

09:04:32 9 A JUROR: Yes, I can.

09:04:33 10 THE COURT: Obviously it was completely improper what
09:04:36 11 she did and said, and it's also not relevant to the issues in
09:04:39 12 this case.

09:04:41 13 Second, is there anything about what happened with
09:04:45 14 former Juror No. 4 that causes you to doubt whether you can
09:04:51 15 continue to be a fair and impartial juror in this case?

09:04:53 16 A JUROR: No.

09:04:54 17 THE COURT: All right. And just to be sure, is there
09:04:57 18 anything else that has occurred in the roughly one month since
09:05:01 19 I gave you the oath that causes you to doubt whether you can
09:05:06 20 continue to be fair and impartial in this case to both sides?

09:05:11 21 Is that a no?

09:05:13 22 A JUROR: I'm fine. I can continue do this role.

09:05:15 23 THE COURT: Okay. You have no doubt of your ability
09:05:19 24 to be fair and impartial?

09:05:19 25 A JUROR: I can be fair and impartial.

09:05:21 1 THE COURT: Fair and impartial or -- I just want to
09:05:24 2 make sure --

09:05:25 3 A JUROR: Fair and impartial.

09:05:26 4 THE COURT: Okay. All right. Just wanted to be sure.
09:05:29 5 Thank you, ma'am.

09:05:29 6 A JUROR: You're welcome.
09:05:29 7 (Juror excused from courtroom).
09:05:29 8 (Juror returned to courtroom).

09:06:12 9 THE COURT: Good morning, ma'am.

09:06:13 10 A JUROR: Good morning.

09:06:14 11 THE COURT: Hope you had a good weekend.
09:06:16 12 I am instructing you that you must completely
09:06:20 13 disregard anything that former Juror No. 4 said or did.

09:06:25 14 A JUROR: Yes, sir.

09:06:26 15 THE COURT: Can you follow that instruction?

09:06:28 16 A JUROR: Absolutely, sir.

09:06:29 17 THE COURT: Okay. It was improper what she did, and
09:06:31 18 it's not relevant to the issues you have to decide in this
09:06:35 19 case.

09:06:36 20 A JUROR: Okay.

09:06:37 21 THE COURT: Second, is there anything about what
09:06:40 22 former Juror No. 4 said or did that causes you to doubt whether
09:06:46 23 you could continue to be a fair and impartial jury -- juror in
09:06:50 24 this case?

09:06:50 25 A JUROR: No. I just -- I let it in one ear and out

09:06:54 1 the other.

09:06:55 2 THE COURT: All right. That's fine.

09:06:56 3 And just to be sure, is there anything else that might
09:07:00 4 have occurred in the roughly one month since you took the oath
09:07:02 5 that causes you to doubt your ability to be fair and impartial
09:07:06 6 in this case?

09:07:07 7 A JUROR: No. Nothing. Listening with open ears.

09:07:11 8 THE COURT: Okay. Good. Thank you very much.

09:07:13 9 A JUROR: You're welcome.

09:07:13 10 (Juror excused from courtroom).

09:07:48 11 (Juror returned to courtroom).

09:07:48 12 THE COURT: Good morning, sir.

09:07:50 13 A JUROR: Good morning.

09:07:51 14 THE COURT: You can take off your mask, please.

09:07:53 15 I am instructing you that you must completely
09:07:58 16 disregard anything that former Juror No. 4 said or did.

09:08:00 17 Can you do that?

09:08:01 18 A JUROR: Yes.

09:08:02 19 THE COURT: All right. Second, has anything that
09:08:08 20 former Juror No. 4 said or did cause you to doubt in any way
09:08:13 21 your ability to continue to be a fair and impartial juror in
09:08:16 22 this case?

09:08:17 23 A JUROR: No.

09:08:19 24 THE COURT: All right. And just to be sure, is there
09:08:21 25 anything else that might have occurred over the last month or

09:08:24 1 so since you took the oath that causes you to be doubt your
09:08:28 2 ability to be a fair and impartial juror in this case?

09:08:33 3 A JUROR: No, sir.

09:08:33 4 THE COURT: All right. Thank you.

09:08:35 5 (Juror excused from courtroom).

09:09:17 6 (Juror returned to courtroom).

09:09:17 7 THE COURT: Good morning, ma'am. You can take your
09:09:19 8 mask off for a minute while I -- this should just take a minute
09:09:22 9 or two.

09:09:22 10 First, I am instructing you that you must completely
09:09:26 11 disregard anything that former Juror No. 4 said or did.

09:09:31 12 Can you follow that instruction?

09:09:33 13 A JUROR: Absolutely.

09:09:33 14 THE COURT: And, second, is there anything that former
09:09:36 15 Juror No. 4 said or did that casts any doubt in your mind about
09:09:42 16 your ability to continue to be a fair and impartial juror in
09:09:48 17 this case?

09:09:48 18 A JUROR: Absolutely not.

09:09:49 19 THE COURT: And just to be sure, is there anything
09:09:51 20 else that might have occurred in the roughly one month since
09:09:54 21 you took the oath that causes you to doubt your ability to
09:09:55 22 continue to be a fair and impartial juror in this case?

09:09:58 23 A JUROR: No, sir.

09:09:58 24 THE COURT: All right. Thank you very much, ma'am.
09:09:58 25 (Juror excused from courtroom).

09:10:38 1 (Juror returned to courtroom).

09:10:38 2 THE COURT: Good morning, ma'am. I hope you had a
09:10:41 3 good weekend, and you can take off your mask for a minute.

09:10:44 4 A JUROR: Thank you.

09:10:45 5 THE COURT: First, I am instructing you that you must
09:10:47 6 completely disregard anything that former Juror No. 4 said or
09:10:51 7 did.

09:10:51 8 Can you follow that instruction, ma'am?

09:10:53 9 A JUROR: Yes.

09:10:54 10 THE COURT: Second, is there anything that former
09:10:56 11 Juror No. 4 said or did that causes you to doubt in any way
09:11:01 12 your ability to continue to be a fair and impartial juror in
09:11:04 13 this case?

09:11:05 14 A JUROR: No.

09:11:06 15 THE COURT: And just to be sure, is there anything
09:11:08 16 else that might have occurred in the roughly one month since I
09:11:11 17 gave you the oath that causes you to doubt in any way your
09:11:15 18 ability to continue to be a fair and impartial juror in this
09:11:20 19 case?

09:11:20 20 A JUROR: No.

09:11:20 21 THE COURT: Thank you.

09:11:22 22 (Juror excused from courtroom).

09:11:55 23 (Juror returned to courtroom).

09:11:55 24 THE COURT: Good morning, sir.

09:11:57 25 A JUROR: Good morning.

09:11:58 1 THE COURT: I am instructing you that you must
09:12:00 2 completely disregard anything that former Juror No. 4 said or
09:12:04 3 did.

09:12:05 4 Can you follow that instruction?

09:12:07 5 A JUROR: Understood. Yeah. Absolutely.

09:12:09 6 THE COURT: And, second, is there anything that former
09:12:11 7 Juror No. 4 said or did which causes you to doubt in any way
09:12:15 8 your ability to continue to be a fair and impartial juror in
09:12:19 9 this case?

09:12:20 10 A JUROR: Absolutely not.

09:12:21 11 THE COURT: All right. And just to be sure, is there
09:12:23 12 anything else that might have occurred over the last month that
09:12:27 13 causes you to doubt in any way your ability to be -- to
09:12:31 14 continue to be a fair and impartial juror in this case?

09:12:34 15 A JUROR: No, sir.

09:12:34 16 THE COURT: All right. Thank you.

09:12:36 17 A JUROR: All right. Thank you.

09:12:36 18 (Juror excused from courtroom).

09:13:12 19 (Juror returned to courtroom).

09:13:12 20 THE COURT: Good morning, ma'am. I hope you had a
09:13:14 21 good weekend.

09:13:15 22 A JUROR: Good morning.

09:13:16 23 THE COURT: First, I am instructing you that you must
09:13:18 24 completely disregard anything that former Juror No. 4 said or
09:13:22 25 did.

09:13:22 1 Can you follow that instruction, ma'am?

09:13:24 2 A JUROR: Yes.

09:13:25 3 THE COURT: And, second, is there anything about what
09:13:28 4 former Juror 4 -- No. 4 said or did that causes you to doubt in
09:13:34 5 any way your ability to continue to be a fair and impartial
09:13:37 6 juror in this case?

09:13:38 7 A JUROR: No.

09:13:39 8 THE COURT: And just to be sure, is there anything
09:13:42 9 else that might have occurred over the roughly one month since
09:13:46 10 I gave you the oath that causes you to doubt in any way your
09:13:50 11 ability to continue to be a fair and impartial juror in this
09:13:53 12 case?

09:13:56 13 A JUROR: No.

09:13:57 14 THE COURT: Thank you very much.

09:13:58 15 (Juror excused from courtroom).

09:14:33 16 (Juror returned to courtroom).

09:14:33 17 THE COURT: Good morning, ma'am.

09:14:35 18 A JUROR: Good morning.

09:14:36 19 THE COURT: I hope you had a good weekend, and you can
09:14:38 20 take off your mask for a minute, please.

09:14:40 21 I am instructing you that you must completely
09:14:42 22 disregard anything that former Juror No. 4 said or did.

09:14:46 23 Can you follow that instruction, ma'am?

09:14:49 24 A JUROR: I understand, and I agree.

09:14:51 25 THE COURT: Okay. And, second, is there anything

09:14:53 1 about what former Juror No. 4 said or did that causes you to
09:14:58 2 doubt in any way your ability to continue to be a fair and
09:15:02 3 impartial juror in this case?

09:15:04 4 A JUROR: None whatsoever.

09:15:05 5 THE COURT: All right. And just to be sure, is there
09:15:07 6 anything else that might have occurred over the roughly one
09:15:10 7 month since I gave you the oath that causes you to doubt your
09:15:14 8 ability to continue to be a fair and impartial juror in this
09:15:16 9 case?

09:15:17 10 A JUROR: No.

09:15:18 11 THE COURT: Thank you very much, ma'am.

09:15:19 12 A JUROR: Thank you.

09:15:19 13 (Juror excused from courtroom).

09:15:57 14 (Juror returned to courtroom).

09:15:57 15 THE COURT: Good morning, sir.

09:15:59 16 A JUROR: Good morning.

09:15:59 17 THE COURT: You can take your mask off for a minute,
09:16:02 18 please.

09:16:02 19 First, I am instructing you that you must completely
09:16:04 20 disregard anything that former Juror No. 4 said or did.

09:16:10 21 Can you follow that instruction, sir?

09:16:11 22 A JUROR: Yes.

09:16:12 23 THE COURT: Second, is there anything about what
09:16:13 24 former Juror No. 4 said or did that causes you to doubt in any
09:16:20 25 way your ability to be -- to continue to be fair and impartial

09:16:23 1 in this case?

09:16:25 2 A JUROR: No.

09:16:26 3 THE COURT: And just to be sure, is there anything
09:16:27 4 else that might have occurred over the roughly one month since
09:16:30 5 I gave you the oath that causes you any concern about
09:16:34 6 continuing to be a fair and impartial juror in this case?

09:16:37 7 A JUROR: No.

09:16:38 8 THE COURT: Thank you very much.

09:16:39 9 A JUROR: All right. Thank you.

09:16:39 10 (Juror excused from courtroom).

09:17:13 11 (Juror returned to courtroom).

09:17:13 12 THE COURT: Good morning, ma'am.

09:17:14 13 A JUROR: Good morning.

09:17:17 14 THE COURT: First, I am instructing you that you must
09:17:20 15 completely disregard anything that former Juror No. 4 said or
09:17:25 16 did.

09:17:25 17 Can you do that?

09:17:26 18 A JUROR: Yes.

09:17:28 19 THE COURT: Second, is there anything about what
09:17:29 20 former Juror No. 4 said or did that causes you to doubt in any
09:17:35 21 way your ability to continue to be a fair and impartial juror
09:17:38 22 in this case?

09:17:39 23 A JUROR: No.

09:17:40 24 THE COURT: And just to be sure, is there anything
09:17:42 25 else that might have occurred in the roughly one month since I

09:17:46 1 gave you the oath that causes you to doubt in any way your
09:17:49 2 ability to continue to be a fair and impartial juror in this
09:17:52 3 case?

09:17:56 4 A JUROR: No.

09:17:56 5 THE COURT: Thank you very much.

09:17:57 6 A JUROR: Thank you.

09:17:57 7 (Juror excused from courtroom).

09:18:34 8 (Juror returned to courtroom).

09:18:34 9 THE COURT: Good morning, sir. If you could take your
09:18:36 10 mask off for a minute, please.

09:18:37 11 A JUROR: Sure.

09:18:38 12 THE COURT: First, I am instructing you that you must
09:18:42 13 completely disregard anything that former Juror No. 4 said or
09:18:46 14 did.

09:18:46 15 Can you do that, sir?

09:18:48 16 A JUROR: Yes, I can.

09:18:49 17 THE COURT: Second, is there anything about what
09:18:52 18 former Juror No. 4 said or did that causes you to doubt in any
09:18:57 19 way your ability to continue to be a fair and impartial juror
09:19:00 20 in this case?

09:19:03 21 A JUROR: No.

09:19:04 22 THE COURT: And just to be sure, is there anything
09:19:06 23 else that might have occurred over the roughly one month since
09:19:09 24 I gave you the oath that causes you to doubt in any way your
09:19:12 25 ability to continue to be a fair and impartial juror in this

09:19:15 1 case?

09:19:16 2 A JUROR: No.

09:19:17 3 THE COURT: Thank you very much.

09:19:17 4 (Juror excused from courtroom).

09:20:00 5 (Juror returned to courtroom).

09:20:00 6 A JUROR: Good morning.

09:20:00 7 THE COURT: Good morning, sir.

09:20:06 8 I am instructing you that you must completely
09:20:08 9 disregard anything that former Juror No. 4 said or did.

09:20:14 10 Can you follow that instruction, sir?

09:20:16 11 A JUROR: Yes.

09:20:17 12 THE COURT: Okay. Second, is there anything about
09:20:19 13 what former Juror No. 4 said or did that causes you to doubt in
09:20:25 14 any way your ability to continue to be a fair and impartial
09:20:28 15 juror in this case?

09:20:29 16 A JUROR: No, Your Honor.

09:20:30 17 THE COURT: And just to make sure, is there anything
09:20:33 18 else, sir, that might have occurred over the last month since I
09:20:36 19 gave you the oath that causes you to doubt in any way your
09:20:39 20 ability to continue to be a fair and impartial juror in this
09:20:43 21 case?

09:20:44 22 A JUROR: No.

09:20:45 23 THE COURT: Thank you.

09:20:45 24 (Juror excused from courtroom).

09:21:14 25 (Juror returned to courtroom).

09:21:14 1 COURTROOM DEPUTY: That's all.

09:21:17 2 THE COURT: Okay. All right. Well, based on each
09:21:22 3 juror's answer, I am confident that each juror can follow my
09:21:27 4 instruction to completely disregard what former Juror No. 4
09:21:31 5 said and did and that each juror doesn't feel that whatever
09:21:37 6 they remember or recall will affect their ability to be fair
09:21:43 7 and impartial or anything else that's occurred in the last
09:21:45 8 month would do so. So I'm going to go forward.

09:21:49 9 Okay. We can bring -- I assume the plaintiffs are
09:21:54 10 ready with its witness. We're going to have a deposition, I
09:21:58 11 think.

09:21:58 12 MR. LANIER: Yes, Your Honor, we have a deposition and
09:21:59 13 then after that we'll do the video hookup of Nelson.

09:22:04 14 THE COURT: Okay. All right.

09:22:07 15 MR. SWANSON: Your Honor, before you do, Brian Swanson
09:22:09 16 for Walgreens. Appreciate the process that you just undertook.
09:22:12 17 We believe that the prejudice to our client cannot be cured,
09:22:16 18 and so we believe that a mistrial is appropriate, but just
09:22:18 19 wanted to have that on the record.

09:22:20 20 Thank you.

09:22:21 21 THE COURT: That's fine.

09:22:22 22 MR. MAJORAS: Walmart joins, Your Honor.

09:22:26 23 MR. DELINSKY: CVS as well, Your Honor.

09:22:32 24 MS. SULLIVAN: Giant Eagle as well.

09:22:44 25 THE COURT: I had asked clients to be on for this

09:22:47 1 portion. They can stay on if they want but they're not
09:22:49 2 required to be on, those who were on the phone.

09:24:36 3 (Brief pause in proceedings).

09:25:19 4 (Jury returned to courtroom at 9:24 a.m.)

09:25:19 5 THE COURT: Good morning. Please be seated.

09:25:22 6 All right. Mr. Lanier, you may call your next
09:25:25 7 witness, please.

09:25:26 8 MR. LANIER: Thank you, Your Honor.

09:25:26 9 May it please the Court, ladies and gentlemen. Good
09:25:30 10 morning.

09:25:30 11 Your Honor, our -- my voice is a little rough.

09:25:35 12 Your Honor, our next witness is Mark Vernazza. It
09:25:41 13 will be a videotape deposition. He spells his name
09:25:46 14 V-e-r-n-a-z-z-a. He is CVS's corporate counsel who testified
09:25:56 15 in the deposition in what's called a 30(b)(6) capacity. That
09:26:00 16 means, in essence, he's speaking for the corporation because
09:26:03 17 companies need someone to speak for them. So he was designated
09:26:07 18 by the company to speak for the company.

09:26:11 19 The whole deposition play, Your Honor, is an hour and
09:26:16 20 8 minutes. 37 of that is what we've designated as plaintiffs.
09:26:20 21 31 minutes is what CVS has designated as defendants, and with
09:26:25 22 the Court's permission, we're ready to play it.

09:26:31 23 MR. DELINSKY: Your Honor, may I just add one line to
09:26:33 24 Mr. Lanier's --

09:26:33 25 THE COURT: Yes, Mr. Delinsky.

—Vernazza (By Video Deposition)—

09:26:35 1 MR. DELINSKY: Good morning, ladies and gentlemen.

09:26:37 2 This deposition concerns the distribution issues in
09:26:41 3 the case, shipments from the warehouses to the farms. It does
09:26:50 4 not concern what happens in the pharmacy when prescriptions are
09:26:55 5 presented.

09:26:55 6 Thank you.

09:26:57 7 MR. LANIER: So, with that, Dan.

09:27:03 8 My name is Eric Kennedy. We briefly met.

09:27:03 9 Can you please state full name for the record.

09:27:06 10 THE WITNESS: My full name is --

09:27:08 11 MR. LANIER: Pause. We have no video.

09:27:12 12 Now we do. Can we start all over again, please.

09:27:15 13 Thank you.

09:27:15 14 DEPOSITION TESTIMONY OF MARK ROBERT VERNAZZA

09:27:19 15 Q. My name's Eric Kennedy. We briefly met.

09:27:22 16 Could you please state your full name for the record.

09:27:24 17 A. My full name is Mark Robert Vernazza.

09:27:28 18 Q. And what is your current employer?

09:27:30 19 A. CVS Pharmacy.

09:27:33 20 Q. And what is your present position with CVS Pharmacy, Inc.?

09:27:37 21 A. Senior legal counsel.

09:27:40 22 Q. Tell me about your current duties and responsibilities.

09:27:44 23 A. I assist the company primarily with respect to litigation
09:27:50 24 and government investigations.

09:27:52 25 Q. I think you've indicated that you are here in response to

—Vernazza (By Video Deposition)—

09:27:55 1 those notices and you are speaking in behalf of CVS Indiana,
09:28:03 2 LLC; correct?

09:28:04 3 A. Yes, and CVS RX Services, Inc.

09:28:07 4 Q. That we're going to refer to as the CVS defendants as we
09:28:07 5 move forward.

09:28:11 6 The other entities that would have provided services
09:28:13 7 to the CVS defendants with respect to the creation and
09:28:16 8 management of suspicious ordering monitoring policies would
09:28:19 9 have been, number one, CVS Pharmacy, Inc., true?

09:28:23 10 A. CVS Pharmacy, Inc., would have provided some of those
09:28:26 11 services, yes.

09:28:26 12 Q. And CVS Pharmacy, Inc., would that be the parent or the
09:28:30 13 owner of the CVS defendants?

09:28:33 14 A. Yes.

09:28:34 15 Q. Can you tell me what efforts you or the CVS defendants have
09:28:41 16 made to provide you with information known or reasonably
09:28:43 17 available to the CVS defendants with respect to the topics that
09:28:46 18 you're going to testify on?

09:28:48 19 A. Yes. I have conducted interviews with the current and
09:29:00 20 former CVS personnel. Those interviews number in excess of 40
09:29:14 21 different individuals that I have interviewed. Many
09:29:17 22 individuals on multiple occasions. I have undertaken a review
09:29:26 23 of a number of different documents in preparation for the
09:29:30 24 deposition. I have sat with our current suspicious order
09:29:38 25 monitoring team and watched them perform their work for a good

—Vernazza (By Video Deposition)—

09:29:48 1 portion of a morning. I have traveled to the Indianapolis
09:29:51 2 distribution center for the purposes of observing their
09:29:55 3 operations and conducting interviews with personnel at that
09:30:04 4 facility. There may be more, but that's what comes to mind.
09:30:10 5 Q. And can you tell me how much time you've put into educating
09:30:13 6 yourself or being educated with respect to the suspicious order
09:30:19 7 monitoring systems programs and procedures at the CVS
09:30:21 8 defendants?
09:30:22 9 A. I can't put a precise time on it. The best of my
09:30:26 10 estimation the amount of time I've spent preparing for this
09:30:30 11 deposition exceeds four weeks of business days.
09:30:36 12 Q. And you understand, as a lawyer, that your testimony here
09:30:40 13 does not necessarily represent your knowledge but represents
09:30:43 14 the knowledge of the CVS defendants? You understand that?
09:30:46 15 A. I understand that as the 30(b)(6) deponent here today.
09:30:51 16 Q. And you understand that your testimony here today
09:30:53 17 represents the positions of the CVS defendants on the topics
09:30:58 18 that we're going to talk about.
09:31:00 19 Do you understand that?
09:31:01 20 A. I understand them being asked to provide corporate
09:31:03 21 testimony.
09:31:03 22 Q. Now, with respect to hydrocodone drugs, HCPs. I'm going to
09:31:03 23 call them hydrocodone drugs. When I call them hydrocodone
09:31:12 24 drugs, I mean HCP's. That's a Schedule III for the most part,
09:31:14 25 what we're going to talk about today, that's a Schedule III

—Vernazza (By Video Deposition)—

09:31:17 1 narcotic.

09:31:18 2 Is that true?

09:31:19 3 A. Hydrocodone combination products, yes, were Schedule III
09:31:26 4 drugs up through October of 2014.

09:31:30 5 Q. Did either of the CVS defendants ever distribute controlled
09:31:41 6 substances to any customer, any entity other than a CVS
09:31:47 7 Pharmacy between '06 and '14?

09:31:48 8 A. No.

09:31:49 9 Q. Between 2006 and '14, when a CVS Pharmacy wanted to order
09:32:01 10 hydrocodone drugs from a CVS distributor, tell me what the
09:32:04 11 process was.

09:32:06 12 A. The general process for a CVS Pharmacy ordering a drug such
09:32:17 13 as hydrocodone combination product from a CVS distribution
09:32:23 14 center would begin with an automated program known as the AIMS
09:32:36 15 system, which would calculate a suggested order for that
09:32:39 16 pharmacy with respect to a particular drug for a particular
09:32:45 17 ordering period.

09:32:46 18 That suggested order would take into account certain
09:32:53 19 historical dispensing information as well as what the system
09:32:59 20 understood to be the balance on hand or inventory of the
09:33:05 21 product. It would generate a suggested order to restore that
09:33:13 22 pharmacy's inventory level to what would be called the target
09:33:20 23 inventory level. The pharmacy would have the ability to modify
09:33:27 24 that suggested order consistent with the needs of the pharmacy.

09:33:36 25 At that point, the order would get passed through the

—Vernazza (By Video Deposition)—

09:33:43 1 mainframe computer system within the company and then subject
09:33:50 2 to different suspicious order monitoring processes placed to
09:33:59 3 the warehouse for distribution.

09:34:01 4 Q. CVS Pharmacy, Inc., would I be correct that they own either
09:34:07 5 directly or indirectly all of the CVS pharmacies in the United
09:34:12 6 States?

09:34:12 7 A. To the best of my corporate knowledge, at this point in
09:34:15 8 time CVS Pharmacy, Inc. owns either directly or indirectly all
09:34:23 9 of the CVS retail pharmacies.

09:34:25 10 Q. CVS Pharmacy, Inc. owns directly or indirectly both the
09:34:31 11 distribution centers we're talking about and the CVS pharmacies
09:34:37 12 across the country; correct?

09:34:38 13 A. While this is not a topic that I undertook preparation on
09:34:42 14 for the purposes of this deposition, to the best of my
09:34:45 15 knowledge that is true.

09:34:46 16 Q. Now, the two CVS defendants both distribute controlled
09:34:53 17 substances; correct?

09:34:54 18 A. They do.

09:34:54 19 Q. To CVS pharmacies; correct?

09:34:56 20 A. Both of the CVS entities named as defendants in this case
09:35:02 21 are distributors of controlled substances.

09:35:06 22 Q. So --

09:35:07 23 A. They are now and have always been only distributors of
09:35:11 24 Schedule III through V controlled substances and have never
09:35:14 25 been distributors of Schedule II controlled substances.

—Vernazza (By Video Deposition)—

09:35:23 1 Traditionally those entities have only distributed controlled
09:35:23 2 substances to CVS pharmacies, to the best of my corporate
09:35:26 3 knowledge.

09:35:27 4 Q. Did CVS from 2006 to 2014, did they understand that
09:35:32 5 hydrocodone drugs, HCP's, were a highly addictive drug?

09:35:36 6 A. CVS was familiar with those drugs as being controlled
09:35:43 7 substances in Schedule III. CVS was also aware that controlled
09:35:51 8 substances could be abused or misused. Beyond that, I'm not
09:35:54 9 sure I have corporate knowledge to answer your question.

09:35:58 10 Q. When did CVS, the CVS defendants, first become aware of the
09:36:05 11 Controlled Substance Act of 1971?

09:36:07 12 A. I have no corporate knowledge that CVS has ever been
09:36:11 13 unaware of the controlled substances acted.

09:36:13 14 Q. Should they have been aware of it in 2006?

09:36:19 15 A. I understand that in 2006 CVS was aware of the Controlled
09:36:27 16 Substances Act.

09:36:27 17 Q. Do you know who Mr. Rannazzisi?

09:36:31 18 A. I do.

09:36:31 19 Q. And who is he?

09:36:34 20 A. Mr. Rannazzisi is a former official with the DEA with
09:36:44 21 responsibilities for oversight over DEA's diversion control
09:36:50 22 organization.

09:36:51 23 Q. Take a look at Exhibit 3. That is a -- that is a letter,
09:36:55 24 is it not, from the United States Department of Justice Drug
09:37:04 25 Enforcement Administration which is the Drug Enforcement

—Vernazza (By Video Deposition)—

09:37:05 1 Administration; correct?

09:37:05 2 A. The Drug Enforcement Administration is what I would
09:37:10 3 consider to be the DEA, yes.

09:37:12 4 Q. September 26th, 2006, is the date of this letter; true?

09:37:16 5 A. The letter appears to be dated September 27, 2006.

09:37:19 6 Q. CVS Indiana, LLC, one of the defendants in this case, it
09:37:24 7 appears as if they received this letter. True?

09:37:25 8 A. To the best of our corporate knowledge, that is true.

09:37:28 9 Q. The letter, Exhibit 3, from the DEA to one of the CVS
09:37:35 10 defendants. Let's look at the first sentence if we could.

09:37:42 11 It states "This letter is being sent to every
09:37:45 12 commercial entity in the United States registered with the Drug
09:37:50 13 Enforcement Administration, DEA, to distribute controlled
09:37:54 14 substances."

09:37:55 15 CVS Indiana at that point in time was a registrant;
09:37:59 16 correct?

09:37:59 17 A. To my understanding, that's correct.

09:38:00 18 Q. Look at the first sentence under background, if you would.

09:38:09 19 And does it state -- and this is the DEA to CVS
09:38:15 20 Indiana, "As each of you is undoubtedly aware, the abuse
09:38:21 21 non-medical use of controlled prescription drugs is a serious
09:38:24 22 and growing health problem in this country."

09:38:27 23 Do you see that statement?

09:38:29 24 A. I do.

09:38:30 25 Q. Was -- I'm assuming then CVS Indiana was aware of this

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09:38:39 1 statement, that statement by the DEA?

09:38:42 2 A. To the best of my corporate knowledge, CVS received this
09:38:45 3 letter. CVS Indiana received this letter and would have
09:38:49 4 reviewed its contents, including that sentence.

09:38:53 5 Q. Do you know whether CVS Indiana or any other CVS entity
09:38:59 6 disagreed with that statement in 2006?

09:39:00 7 A. I have no knowledge that CVS disagreed with that.

09:39:03 8 Q. Let me ask you this. Let's go on and read further and see
09:39:07 9 what the DEA was telling the CVS defendant from Indiana here.

09:39:11 10 It next states, "The registrant shall" -- you
09:39:15 11 understand -- "shall inform the field division of the
09:39:19 12 administration in his area of suspicious orders when discovered
09:39:25 13 by the registrant" -- and that would be CVS Indiana; correct?

09:39:29 14 A. Yes.

09:39:30 15 Q. -- "suspicious orders" -- this is coming from the
09:39:34 16 regulations -- "suspicious orders include orders of unusual
09:39:38 17 size, orders deviating substantially from a normal pattern and
09:39:44 18 orders of usual frequency."

09:39:45 19 CVS Indiana would have been aware of that statement
09:39:47 20 had they received and read this letter; correct?

09:39:52 21 A. I believe that's correct.

09:39:53 22 Q. Generally, pharmacies have certain responsibilities with
09:40:06 23 respect to filling prescriptions, certain requirements with
09:40:12 24 respect to attempting to prevent diversion, pharmacies have
09:40:19 25 those certain responsibilities. Agreed?

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09:40:21 1 A. There are certain responsibilities under the Controlled
09:40:24 2 Substances Act that are incumbent upon pharmacies and
09:40:28 3 pharmacists with respect to the controlled substance.

09:40:32 4 Certainly one of those is the pharmacist's duty to
09:40:36 5 perform corresponding responsibilities or obligation of the law
09:40:41 6 to perform corresponding responsibility due diligence before
09:40:46 7 dispensing a prescription that's certainly consistent with
09:40:49 8 prevention and diversion.

09:40:51 9 Q. Can we agree that just because the pharmacies have certain
09:40:54 10 responsibilities that you just described, can you agree that
09:40:57 11 just because those responsibilities exist on the part of a
09:41:00 12 pharmacy, those do not in any way diminish or negate the
09:41:04 13 responsibilities of the distributor with respect to monitoring
09:41:10 14 suspicious orders?

09:41:10 15 A. Regulations and the Controlled Substance Act provide for
09:41:14 16 different obligations on behalf of pharmacies and distributors.
09:41:25 17 CVS undertakes to comply with both sets of obligations.

09:41:33 18 Q. And one does not affect the other; correct?

09:41:35 19 A. I don't know that I would agree with that. A pharmacy
09:41:41 20 places orders for controlled substances that are shipped.
09:41:48 21 There can be any number of processes, procedures, safeguards in
09:41:56 22 place at the pharmacy that would result in the pharmacy not
09:42:00 23 placing orders that would be identified by a distributor as
09:42:08 24 suspicious.

09:42:09 25 Q. Is it the position of the CVS defendants that because they

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09:42:15 1 had pharmacy policies in place that their responsibility to
09:42:20 2 monitor suspicious orders was less?

09:42:25 3 A. There was no less an obligation to monitor suspicious
09:42:31 4 orders.

09:42:31 5 Q. The responsibility is not less; correct?

09:42:33 6 A. It is relevant to the concept of knowing your customer, and
09:42:38 7 in the case of CVS pharmacies, CVS pharmacies had in place
09:42:44 8 policies and procedures requiring pharmacists to follow the
09:42:50 9 law, including corresponding responsibility.

09:42:56 10 There was also a system of field supervision of those
09:42:58 11 pharmacies, a system of loss prevention supervision of those
09:43:03 12 pharmacies, and other considerations that would be relevant to
09:43:09 13 understanding who you were shipping the -- your shipments to.

09:43:13 14 So is it relevant to the obligation of suspicious
09:43:20 15 order monitoring, we would say it is. It does not mean that
09:43:26 16 the regulation doesn't say what the regulation says or that the
09:43:29 17 regulation doesn't apply to CVS distributors as a registrant.

09:43:34 18 Q. Showing you Exhibit 65. Have you seen this before?

09:43:38 19 A. Allow me to just take a minute to review.

09:43:41 20 Q. The title of this document is "CVS Distribution Center
09:43:44 21 Controlled Drug DEA Standard Operating Procedures Manual";
09:43:47 22 correct?

09:43:51 23 A. I'm sorry. I was still leafing through the back of the
09:43:57 24 document. I'm not done reviewing it, but I can answer your
09:43:58 25 questions about the title.

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09:43:59 1 Q. Right. That's the title of this document; correct?

09:44:03 2 A. That is the title of the document.

09:44:06 3 Q. And if you'll go down -- this was -- this was written
09:44:12 4 either by or in behalf of the CVS distributors; correct?

09:44:18 5 Is that correct?

09:44:21 6 A. To the best of my corporate knowledge, that's correct.

09:44:24 7 Q. Let me ask you this: This is a document -- do you know who
09:44:28 8 made this document?

09:44:29 9 That would be CVS Pharmacy created it or paid to get
09:44:33 10 this document created, CVS Pharmacy, they would have done this;
09:44:37 11 right? Is that true?

09:44:40 12 A. To the best of my corporate knowledge, this document would
09:44:45 13 have been put together by individuals working for CVS Pharmacy
09:44:58 14 in connection with the distribution center entities.

09:45:02 15 Q. All right. And if we go down to that fifth paragraph, does
09:45:06 16 it state that "CVS is responsible for ensuring compliance with
09:45:10 17 DEA regulatory requirements and that responsibility cannot be
09:45:17 18 abdicated or transferred to anyone else."

09:45:20 19 Are those the words of CVS Pharmacy, Inc.?

09:45:24 20 A. Those are the words that are here in this document.

09:45:28 21 Q. Okay. Let's look at -- let's look at what CVS -- the CVS
09:45:35 22 defendants did and CVS Pharmacy, Inc., did to fulfill their
09:45:39 23 duties with respect to the distribution of hydrocodone drugs;
09:45:44 24 all right?

09:45:44 25 January of '06, by January of '06 the Controlled

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09:45:50 1 Substance Act is -- has been in place for over 30 years. True?

09:45:56 2 A. To the best of my recollection, that's correct.

09:46:00 3 Q. I want to know what policies and procedures did CVS Indiana
09:46:05 4 have in place and functioning to monitor suspicious orders of
09:46:11 5 controlled substances that it was distributing in January of
09:46:18 6 '06.

09:46:18 7 A. Just as a -- a little bit of context here may be -- may be
09:46:23 8 helpful to your understanding.

09:46:26 9 The CVS Indiana warehouse facility is a large facility
09:46:30 10 that ships to CVS stores. It ships not just drugs, but also
09:46:40 11 front store items or what we call anything from paper towels to
09:46:47 12 anything that you would see in the front of the store. Within
09:46:49 13 the warehouse there is a section dedicated to what we would
09:46:56 14 call "pharmacy items."

09:46:58 15 Within that section containing pharmacy items there's
09:47:05 16 a subsection that contains controlled substances. Those
09:47:10 17 controlled substances are put in what's called a cage with
09:47:17 18 restricted access to only certain individuals. When CVS
09:47:24 19 Indiana would have received an order for a controlled
09:47:29 20 substance, that controlled substance order would have gone to
09:47:33 21 individuals who work within the controlled substances cage. We
09:47:39 22 sometimes refer to them as the pickers and packers because
09:47:41 23 they're the folks who actually pick the drugs, place them in
09:47:49 24 secured totes and see to it that those then are transferred for
09:47:56 25 loading on trucks.

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09:47:59 1 It has always been practice of the pickers and the
09:48:05 2 packers, it has always been the understanding of the pickers
09:48:11 3 and packers within that controlled drug cage to be aware of
09:48:21 4 unusual orders and when they were to identify an unusual order,
09:48:30 5 to escalate that for further review. The pickers and the
09:48:35 6 packers have experience picking those controlled substances and
09:48:41 7 have experience picking the controlled substances for those
09:48:48 8 stores.

09:48:51 9 Q. Have you finished your answer?

09:48:54 10 A. I believe so.

09:48:54 11 Q. That's what was in place in January of '06?

09:48:59 12 A. There were also a number of systems that would have
09:49:12 13 complemented that practice that were based in the field, not
09:49:15 14 the least of which is a set of field supervisors over CVS
09:49:23 15 Pharmacy stores --

09:49:24 16 Q. I'm not talking about --

09:49:25 17 A. -- the least of which is loss prevention personnel with
09:49:34 18 specific duties to investigate diversion. There were hundreds
09:49:42 19 of pharmacy supervisors and approximately 150 loss prevention
09:49:51 20 personnel.

09:49:52 21 The loss prevention organization also would run data
09:50:00 22 analysis that would look for certain indicators of diversion
09:50:10 23 with respect to store ordering practices. For instance, the
09:50:17 24 report would look at what we would deem pharmacy growth, which
09:50:24 25 is a store that may be ordering more controlled substances than

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09:50:31 1 it was dispensing. And that report verified over time in form
09:50:36 2 and substance, but would have included other potential indicia
09:50:45 3 of diversion that might prompt a field loss prevention officer
09:50:59 4 to conduct at the store level.

09:51:02 5 Q. What was this report called?

09:51:03 6 A. The PDMR report. It may have changed names to some degrees
09:51:08 7 over the course of time, but that report was in place, to the
09:51:11 8 best of my corporate knowledge, in 2006.

09:51:13 9 Q. And tell me the data information on the PDMR report.

09:51:19 10 A. It would include orders. To the best of my recollection,
09:51:26 11 it would include orders from warehouses and outside vendors.
09:51:32 12 It would include information about a store's dispensing. It
09:51:34 13 may include information about instances in which a store would
09:51:42 14 have manually adjusted the suggested order through the AIMS
09:51:48 15 system, and it may have included, and I believe did include,
09:51:52 16 information where a store may have adjusted it's inventory
09:52:04 17 level in the computer system to reflect a different inventory
09:52:07 18 level than the computer system -- than the computer system had
09:52:16 19 on record.

09:52:16 20 Q. Was the PDMR report reviewed prior to every single order
09:52:19 21 being placed for a hydrocodone drug in 2006?

09:52:24 22 A. It was not.

09:52:28 23 Q. Did the PDMR report provide an evaluation of whether or not
09:52:32 24 a specific order for a CVS Pharmacy for a hydrocodone product,
09:52:36 25 whether or not that was of unusual size for a specific order?

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09:52:52 1 A. It could potentially. It looked at orders in the -- in the
09:52:57 2 aggregate to determine whether or not that store, among other
09:53:01 3 things, was receiving more than it was dispensing.

09:53:08 4 Q. Did it evaluate specific orders for hydrocodone products in
09:53:15 5 2006 with respect to whether or not it was unusual in size in
09:53:21 6 relation to other orders placed by that pharmacy?

09:53:25 7 A. Yeah, it -- as I said, it contained information about
09:53:30 8 orders that could be evaluated by loss prevention personnel to
09:53:37 9 determine whether or not there should be an investigation
09:53:45 10 undertaken with respect to the orders that were reflected on
09:53:49 11 that report.

09:53:50 12 Q. Are you talking about the VIPER reports? Is that what
09:53:54 13 you -- is that what this PDMR is?

09:53:56 14 A. It would come out of the VIPER system, that's correct.

09:53:58 15 Q. But the report itself did not analyze any specific order to
09:54:02 16 determine whether or not that order was unusual in size;
09:54:04 17 correct? We've all looked at the form.

09:54:07 18 A. The company did not consider the results that populated on
09:54:15 19 that report to be per se unusual in size. It was a tool that
09:54:19 20 was available to loss prevention personnel in determining
09:54:22 21 whether or not further investigation by loss prevention
09:54:26 22 personnel would be appropriate.

09:54:27 23 Q. That report doesn't even identify a specific single order;
09:54:32 24 correct? Doesn't even identify a specific order.

09:54:40 25 A. I don't recall whether specific orders are listed in the

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09:54:47 1 report or whether it's an aggregate number at this point in
09:54:52 2 time.

09:54:54 3 Q. Well, if you're saying that report is part of a suspicious
09:54:59 4 order monitoring program, isn't that something you should know?

09:55:02 5 A. I don't think I said that that was our suspicious order
09:55:04 6 monitoring system, I said that it is a complementary to what
09:55:11 7 was occurring in our distribution centers and indeed the
09:55:17 8 metrics that would -- some of the metrics it looked at in that
09:55:21 9 report are consistent with some of the metrics that we look at
09:55:26 10 in our algorithms that we run.

09:55:29 11 Q. And in your opinion on Exhibit 93, PDMR report, able to
09:55:36 12 show me the evaluation of a single specific order for size?

09:55:39 13 Are you able to do that? You are not.

09:55:42 14 A. Based on the information I have in front of me I'm not.

09:55:44 15 Q. Thank you.

09:55:45 16 This report, the PDMR report, can you show the jury
09:55:49 17 anywhere on this report where the frequency of orders for
09:55:57 18 controlled substances is being evaluated, anywhere in this
09:56:00 19 report? Can you show us that?

09:56:01 20 A. Based on my corporate knowledge at this point in time I
09:56:03 21 cannot.

09:56:03 22 Q. Can you show us anywhere on this report, the PDMR,
09:56:11 23 Exhibit 93, where an evaluation is done of a specific order as
09:56:13 24 it relates to the pattern of ordering of a controlled
09:56:19 25 substance?

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09:56:19 1 A. Among the things that we consider in analysis of pattern is
09:56:29 2 whether or not the -- a particular store is ordering in more
09:56:34 3 than it's dispensing. That remains part of the algorithms that
09:56:39 4 we run today. That is reflected in this report. It's, in
09:56:44 5 fact, the point of this report, so, to some degree this report
09:56:50 6 could be used to look at pattern.

09:56:56 7 But, again, as I testified, this report was not what
09:56:59 8 we deemed a suspicious order monitoring report. It's relevant
09:57:04 9 to orders and order size and some degree order of pattern, but
09:57:12 10 the point of this was not to produce results for the purposes
09:57:15 11 of determining whether suspicious orders were made and
09:57:19 12 reporting those to the DEA.

09:57:20 13 Q. You talked about the pickers and the packers. Is it your
09:57:25 14 testimony that the pickers and the packers were responsible for
09:57:30 15 evaluating orders to determine whether or not they are
09:57:33 16 suspicious?

09:57:35 17 A. The pickers and the packers would be aware of, as part of
09:57:45 18 their job responsibilities, to raise any orders that they
09:57:49 19 considered to be irregular based on their knowledge and
09:57:55 20 experience and to escalate those within the chain of command
09:58:06 21 within the warehouse and could involve a consultation with
09:58:14 22 field personnel. Most commonly, to my corporate knowledge,
09:58:21 23 that would be a phone call to the pharmacy.

09:58:23 24 There were fairly -- there were a number of instances
09:58:35 25 where I understand the pickers and the packers would identify

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09:58:40 1 orders and initiate contact through supervisors to the store in
09:58:50 2 order to determine whether that order was one that the store
09:58:58 3 made by mistake, for instance.

09:59:02 4 Q. Tell me this, what database, what information and knowledge
09:59:06 5 did a picker and a packer have in January of '06 to determine
09:59:11 6 whether or not a specific order for a specific pharmacy was of
09:59:16 7 unusual size?

09:59:17 8 A. Their knowledge and experience of picking controlled orders
09:59:22 9 and exclusively controlled orders for many years for generally
09:59:31 10 speaking the same subset of stores. They would then escalate
09:59:36 11 those orders for further review, which would most often include
09:59:43 12 a phone call to the store and I -- and I can't tell you, you
09:59:48 13 know, what each of those conversations may have included or
09:59:55 14 what information may have been provided by the store.

10:00:00 15 Q. The -- let me ask you this: This pickers and the packers
10:00:09 16 and their just -- their general experience, is that what CVS
10:00:15 17 had in place as its system to disclose suspicious orders based
10:00:22 18 upon size, frequency, and pattern in '06?

10:00:27 19 A. To the best of my corporate knowledge at this point in
10:00:29 20 time, yes.

10:00:30 21 Q. From '06 to 2012, did a picker and a packer ever identify
10:00:36 22 an order that was stopped and determined to be suspicious and
10:00:38 23 reported to the DEA, ever?

10:00:41 24 A. To the best of my corporate knowledge at this point in
10:00:47 25 time, we do not have record of any suspicious order being

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10:00:54 1 identified or reported to the DEA in 2006 from the Indianapolis
10:01:04 2 distribution center.

10:01:05 3 Q. From January of '06 -- I want to talk about from January of
10:01:09 4 '06, because we've talked about January, from January of '06
10:01:12 5 until 12-1-07, when the first operating policy manual comes
10:01:16 6 into play, can you describe for me what suspicious order
10:01:22 7 monitoring policies and procedures were in place?

10:01:26 8 A. The practice and procedure that I described to you with
10:01:29 9 respect to the controlled substances cage, pickers and packers
10:01:36 10 was in effect and remained in effect.

10:01:40 11 There were a number of other safeguards and diversion
10:01:47 12 at various places within the company, but with respect to the
10:01:52 13 identification of suspicious orders for reporting to the DEA,
10:02:02 14 to the best of my corporate knowledge at this point in time,
10:02:04 15 that was the primary practice that was in place.

10:02:11 16 Q. Sir, you were shown Exhibit 6. Is the subject "New RX DEA
10:02:16 17 SOP"?

10:02:17 18 A. The subject of the e-mail at the bottom of the page is "New
10:02:22 19 RX DEA SOP."

10:02:24 20 Q. Now, on this date, November 27, 2007, Amy Lynn Brown
10:02:33 21 states, "Good afternoon, in late August we met to review a new
10:02:37 22 SOP."

10:02:38 23 SOP, we understand to mean standard operating
10:02:40 24 procedure. True?

10:02:43 25 A. I'm familiar with that terminology being used that way,

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10:02:46 1 yeah.

10:02:46 2 Q. And let me ask you this: Who was the company authorizing
10:02:49 3 the SOP at this point in time?

10:02:59 4 A. To the best of my corporate knowledge, the Buzzeo Group was
10:03:03 5 engaged in a consulting capacity and assisted in authoring this
10:03:14 6 document that's attached to the e-mail.

10:03:15 7 Q. Do you agree with her statement here, "We are still in the
10:03:19 8 process of writing the suspicious order monitoring section of
10:03:23 9 this standard operating procedure."

10:03:26 10 As of this date, do you agree that it was still being
10:03:29 11 written in November of 2007?

10:03:31 12 Do you agree with that statement?

10:03:34 13 A. To the best of my corporate knowledge, that is true.

10:03:38 14 Q. Exhibit 14, please.

10:03:40 15 We were just talking about December of '07, so I want
10:03:46 16 to move forward now to September of '08. So, ten months or so
10:03:53 17 later. This is an e-mail, that being Exhibit 14, from Richard
10:04:09 18 Sonate (phonetic), correct?

10:04:10 19 A. September 2008 from Richard Sonate, yep.

10:04:14 20 Q. The standard operating procedures for the suspicious
10:04:17 21 monitoring are still being drafted, and we are in September of
10:04:21 22 '08; correct?

10:04:22 23 A. To the best of my corporate knowledge that's true.

10:04:26 24 Q. Let's move forward now to April 3rd of '09. And that would
10:04:29 25 be Exhibit 7. All right?

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10:04:34 1 Looking at the bottom e-mail from Amy Propatier.

10:04:39 2 She's employed at CVS Pharmacy, Inc.; correct?

10:04:43 3 A. To the best of my knowledge that's true, yes.

10:04:46 4 Q. And she would have been involved with establishing the
10:04:49 5 suspicious order monitoring policy and that section of the
10:04:55 6 standard operating procedures. True?

10:04:55 7 A. To the best of my knowledge, Mrs. Propatier was involved in
10:05:02 8 the standard operating procedure.

10:05:03 9 Q. Now, it says, "Good morning, attached is the DEA SOP,
10:05:09 10 standard operating procedures, which was implemented in
10:05:12 11 December of 2007. We have made some recent updates to the SOP.
10:05:18 12 Please note we have updated the record retention period from
10:05:21 13 five years to two years.

10:05:23 14 "Also, the SOM, suspicious order monitoring section,
10:05:29 15 is still it not included in the SOP. In the event of an audit
10:05:34 16 and the question comes up, please direct them to corporate,
10:05:38 17 Frank or myself, for explanation of the program. Please review
10:05:42 18 with your teams and forward to anyone I have missed."

10:05:47 19 We agree at this point in time now, it's April of '09,
10:05:52 20 and the standard, or, excuse me, the suspicious order
10:05:55 21 monitoring section is still not included in the standard
10:06:00 22 operating procedures; correct?

10:06:03 23 A. The final version is not included in the standard operating
10:06:07 24 procedures being referenced by Mrs. Propatier in this e-mail.

10:06:12 25 Q. Exhibit 49, let's look at CVS's -- whether or not they have

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10:06:18 1 in procedures in place.

10:06:19 2 We have an e-mail dated 11-5-09.

10:06:24 3 Do you see that top e-mail? Do you see that? Does it
10:06:32 4 state November 5, 2009, an e-mail from Mr. Mortelliti; correct?

10:06:42 5 A. That appears to be the date of the e-mail. The subject of
10:06:46 6 the e-mail is November 10th, 2009.

10:06:48 7 Q. Who is Mr. Mortelliti?

10:06:51 8 A. Mr. Mortelliti was an individual within the CVS loss
10:07:00 9 prevention organization.

10:07:01 10 Q. CVS Pharmacy, Incorporated; correct?

10:07:05 11 A. To the best of my corporate knowledge that is correct.

10:07:08 12 Q. And did he have significant responsibility for the
10:07:11 13 creation, the implementation of the suspicious order monitoring
10:07:14 14 policies?

10:07:20 15 A. I believe Mr. Mortelliti had involvement in the
10:07:23 16 implementation of both the system that had been developed by
10:07:29 17 the Buzzeo Group as well as input perhaps, to the best of my
10:07:37 18 corporate knowledge, the policies.

10:07:40 19 Q. Mr. Mortelliti, now we're in November of '09, he writes,
10:07:44 20 "Sounds good. I am trying to get a rough draft of the
10:07:47 21 suspicious order monitoring standard operating procedure to you
10:07:53 22 prior to the meeting. This is a big issue with CVS and the
10:07:59 23 DEA."

10:08:05 24 Do you agree that drafting and having written
10:08:09 25 suspicious order monitoring, a policy written and drafted now

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10:08:21 1 in November of '09 was a big issue, not only for CVS, but also
10:08:25 2 for the DEA at that point in time?

10:08:26 3 Would you agree with that statement on behalf of CVS?

10:08:29 4 A. I don't know what Mr. Mortelliti's specifically addressing
10:08:39 5 here. The context of the e-mail is not clear to me --

10:08:42 6 Q. Let me go back and read it again.

10:08:43 7 A. -- with CVS's compliance with DEA regulations is something
10:08:48 8 that CVS takes seriously.

10:08:50 9 Q. In behalf of CVS, who you are here representing, would you
10:08:55 10 disagree that at this point in time the drafting of suspicious
10:09:02 11 order monitoring policies were a big issue for CVS and the DEA
10:09:06 12 at this point in time? It's now November of 2009.

10:09:10 13 A. In November of 2009, it's my understanding that CVS had the
10:09:17 14 Buzzeeo algorithmic based system in place. This references
10:09:26 15 drafting the suspicious order monitoring SOP prior to a
10:09:34 16 meeting, the context of which is unclear from the face of the
10:09:38 17 e-mail.

10:09:38 18 I have not reviewed this e-mail in preparation for
10:09:42 19 this deposition, nor have I had an opportunity to speak with
10:09:47 20 Mr. Mortelliti about what he was communicating here, so,
10:09:50 21 unfortunately, I don't have corporate knowledge as to exactly
10:09:53 22 what that means.

10:09:55 23 Q. So summarize here, to catch up to where we're at, first
10:10:04 24 creation of standard operating procedures by CVS was 12-1-07.
10:10:10 25 This is an exhibit that we created. The first one we looked

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10:10:13 1 at, the first operating procedures with respect to suspicious
10:10:16 2 order monitoring had a paragraph that we read saying, being
10:10:22 3 developed and written, did it not?

10:10:23 4 A. I remember that language from the written policy that was
10:10:28 5 in draft form at that time.

10:10:30 6 Q. Two years later the written policy, intended to be the
10:10:34 7 single document to describe these policies, two years later,
10:10:38 8 same thing, being developed and written; correct?

10:10:40 9 We looked at that, did we not?

10:10:41 10 A. Again, with respect to the written document that we looked
10:10:46 11 at, I remember this language being included, I think as I
10:10:54 12 explained, there was a system.

10:10:57 13 Q. January of '10, we just looked at that document, said the
10:11:01 14 same thing, being developed and written; correct?

10:11:05 15 A. Again, I remember that language being included in that
10:11:11 16 written document that we looked at earlier. I could again look
10:11:15 17 at the document and confirm.

10:11:18 18 Q. So it's been over four years since the DEA wrote the first
10:11:23 19 letter, and by this point in time the DEA has written three
10:11:26 20 letters total, have they not, April of 2010, the DEA has
10:11:31 21 written three letters. True?

10:11:33 22 A. We have discussed three letters today that were apparently
10:11:42 23 written by the DEA that predated 4-30-2010.

10:11:51 24 Q. This is April 2010. Four months later things changed
10:12:00 25 quickly at CVS; correct? In August of 2010 things changed

—Vernazza (By Video Deposition)—

10:12:06 1 quickly for CVS with respect to its responsibility and creation
10:12:11 2 and implementation of a system to monitor suspicious orders.

10:12:18 3 A. Based on my corporate knowledge that I have developed in
10:12:22 4 preparation for this deposition, I can't say that that's
10:12:28 5 correct.

10:12:29 6 Q. Sir, you know and you understand very well that in August
10:12:35 7 of 2010 the DEA came knocking on CVS's door to do an inspection
10:12:44 8 and audit and to investigate; correct?

10:12:46 9 A. I believe that our distribution facilities had undergone a
10:12:52 10 number of audits throughout the course of many years. I am
10:13:00 11 aware of an audit that occurred in the Indianapolis
10:13:06 12 distribution center in approximately 2010 when suspicious order
10:13:18 13 monitoring was discussed with the company's personnel.

10:13:22 14 Q. The DEA came knocking to your distribution centers in 2010
10:13:28 15 to inspect and to audit and to investigate; correct?

10:13:31 16 We're going to go through what they did, but that's
10:13:33 17 when had they came.

10:13:34 18 A. My understanding was that it was an audit. To the best of
10:13:38 19 my knowledge, the Indianapolis distribution center had gone
10:13:42 20 through what are essentially routine audits on a cyclical basis
10:13:50 21 essentially every three years since CVS owned the facility.

10:13:53 22 Q. But this one was different. This presented a problem for
10:13:57 23 CVS in August 2010, correct, because they asked -- they asked
10:14:02 24 for your suspicious order monitoring policies; right?

10:14:07 25 They asked for them, and they didn't have them in

—Vernazza (By Video Deposition)—

10:14:09 1 place; correct?

10:14:11 2 A. I'm not sure I have a clear corporate knowledge on the
10:14:17 3 policies that may or may not have been provided to the DEA. At
10:14:26 4 that time I am aware that suspicious order monitoring was
10:14:28 5 discussed with the -- with the DEA and that the DEA made no
10:14:38 6 adverse findings with respect to the company's suspicious order
10:14:42 7 monitoring system.

10:14:45 8 Q. So the answer to my question is yes, they asked for your
10:14:47 9 policies in August of 0 -- 2010. They asked for them, do you
10:14:51 10 remember that?

10:14:51 11 A. I remember that there has been a -- there was a discussion
10:14:54 12 about suspicious order monitoring at that time.

10:14:57 13 Q. Maybe this will help you, sir.

10:15:00 14 A. Consistent with my recollection that policies were asked
10:15:04 15 for and/or provided. I don't believe I have more specific
10:15:09 16 recollection than that.

10:15:12 17 Q. 32, please.

10:15:19 18 32 looks like a memo with respect to the DEA
10:15:24 19 inspection in August of 2010. The memo is to Frank Devlin, and
10:15:33 20 Frank Devlin, tell us his position.

10:15:34 21 A. Mr. Devlin was a loss prevention -- one of loss prevention
10:15:48 22 personnel responsible for CVS distribution centers.

10:15:51 23 Q. And he worked for CVS Pharmacy, Inc., would that be true?

10:15:54 24 A. To the best of my understanding, that's true.

10:15:56 25 Q. And who's Terrence Dugger?

—Vernazza (By Video Deposition)—

10:16:09 1 A. To the best of my knowledge, Mr. Dugger was in loss
10:16:14 2 prevention at the Indianapolis distribution center.

10:16:14 3 Q. And it says, "Results of the inspection, the DEA
10:16:16 4 inspectors, Madeline Kuzma and Elizabeth Stewart, was on site
10:16:21 5 at the Indianapolis facility on Tuesday, August 24, 2010,
10:16:25 6 through Thursday, 26, 2010, and again on Tuesday, August 31,
10:16:32 7 2010, and Wednesday, September 1, 2010."

10:16:34 8 Did I read that correctly?

10:16:36 9 A. I believe you did.

10:16:38 10 Q. "Their purpose was to conduct a full inspection. Requested
10:16:43 11 information," you go on down, under requested information,
10:16:54 12 fourth bullet down is SOM SOP. The DEA requested the
10:17:04 13 suspicious order monitoring standard operating procedure of CVS
10:17:10 14 in August of 2010. True?

10:17:17 15 A. Under requested information SOM SOP appears in this
10:17:20 16 document.

10:17:21 17 Q. Let's see what CVS did when the DEA asked for their
10:17:25 18 policies.

10:17:26 19 Give me Exhibit 40, please.

10:17:28 20 Start at the bottom, because that's the first e-mail.
10:17:33 21 The bottom e-mail, Mr. Devlin, CVS Pharmacy, Inc., on
10:17:43 22 August 23, 2010, he's writing Mr. Mortelliti and Amy Propatier,
10:17:51 23 subject DEA SOP. And he says, "Good morning, John," and this
10:17:55 24 is -- this is while the audit's going on, "can you work with
10:18:01 25 Amy to get the PSE IRR and the controlled drug IRR inserted

—Vernazza (By Video Deposition)—

10:18:10 1 into our DEA standard operating procedure under suspicious
10:18:16 2 order monitoring? We promised this to the DEA by Wednesday."

10:18:22 3 Did I read that correct?

10:18:24 4 A. You did, although you mentioned that this was while the
10:18:27 5 audit was going on, and this e-mail is sent on August 23rd.
10:18:32 6 The notes of the inspection say that the inspection began on
10:18:35 7 August 24th, so I don't know that this was while the audit was
10:18:39 8 underway at the Indianapolis distribution center.

10:18:43 9 Q. Well, this says --

10:18:44 10 A. Mr. Devlin's e-mail was sent in response to a request from
10:18:48 11 the DEA in connection with its inspection of the Indianapolis
10:18:54 12 distribution center.

10:18:54 13 Q. Is it your testimony that just by pure coincidence they
10:19:01 14 promised to give the DEA the suspicious order monitoring
10:19:05 15 section and the SOP's by Wednesday, that has nothing to do with
10:19:10 16 the audit.

10:19:11 17 Is that your testimony? You think that was a
10:19:15 18 coincidence on this date?

10:19:16 19 A. I don't have corporate knowledge that it was associated
10:19:18 20 with the audit.

10:19:19 21 Q. So things must have been -- moved pretty fast, right?
10:19:23 22 Because a few days later Amy Propatier is sending an e-mail to
10:19:33 23 Annette Lamoureux, dated 8-26 -2010. She is attaching the DEA
10:19:39 24 suspicious -- or, excuse me, standard operating procedure dated
10:19:43 25 8-25-10.

—Vernazza (By Video Deposition)—

10:19:45 1 Is that true? Do you see those dates? Are those
10:19:50 2 dates correct?

10:19:50 3 A. The date of the e-mail?

10:19:50 4 Q. Yes.

10:19:50 5 A. Is 8-26-10.

10:19:53 6 Q. And she states, "Can you please post we added the
10:19:57 7 suspicious order monitoring?"

10:19:59 8 Do you see that, sir?

10:20:00 9 A. I see that in the e-mail.

10:20:02 10 Q. And this is the first time that the suspicious order
10:20:06 11 monitoring procedures have been added to the standard operating
10:20:12 12 procedures at CVS, August of 2010?

10:20:22 13 A. I'm sorry. I'm just going to take a moment to review this.

10:20:25 14 Q. We're going to go through it, sir, in detail.

10:20:27 15 A. To the best of my corporate knowledge at this point in time
10:20:30 16 it is consistent that this document reflects the first revision
10:20:39 17 to the prior draft that we were looking at before. I do not
10:20:47 18 know whether or not it was done in connection with the DEA
10:20:50 19 inspection.

10:20:51 20 Q. This idea that you don't understand this is related to the
10:20:54 21 DEA that was there for four days within a day of this. Let's
10:21:01 22 look at -- look at Exhibit 40. This is Mr. Mortelliti, again.
10:21:08 23 He's writing to agreeing Greg Brantley.

10:21:16 24 Do you know who he is?

10:21:17 25 A. I don't.

—Vernazza (By Video Deposition)—

10:21:18 1 Q. Copying Mr. Devlin who is involved with these procedures;
10:21:20 2 correct?

10:21:26 3 A. He would have been.

10:21:27 4 Q. And sent 8-25-2010, subject, drug control -- excuse me --
10:21:32 5 control drug IRR SOP; correct? And that's suspicious order
10:21:35 6 monitoring. True?

10:21:43 7 Is that true?

10:21:43 8 A. The IRR was a report that was generated in connection with
10:21:46 9 our suspicious order monitoring process during that time.

10:21:48 10 Q. And the attachment is -- this says, "Importance high";
10:21:52 11 right? It says it's high importance?

10:21:54 12 A. Yes.

10:21:55 13 Q. The audit's going on with the DEA, right, 8-25-2010. True?

10:22:03 14 A. That is correct, according to the notes from Mr. Dugger
10:22:10 15 that you showed me in Exhibit 32.

10:22:12 16 Q. This says, "Attachments controlled drug IRR draft 3 doc."
10:22:12 17 Do you see that?

10:22:19 18 A. I do.

10:22:21 19 Q. It says, "Greg, this needs to be implemented ASAP."

10:22:27 20 What's the big hurry on this date if it isn't the DEA,
10:22:30 21 sir? What's the big hurry? This is -- you've been drafting
10:22:33 22 this since 2007. It's now 2010. The DEA is there. They
10:22:44 23 incorporate this into the SOP's for the first time and he's
10:22:50 24 sending it out saying you need to implement this ASAP. Explain
10:22:55 25 to me, what's the hurry.

—Vernazza (By Video Deposition)—

10:22:57 1 A. I don't have corporate knowledge that would answer that
10:22:59 2 question.

10:23:00 3 Q. Before you I believe is Exhibit 31. Let's start at the
10:23:05 4 bottom so we can go in chronological order, these e-mails.

10:23:10 5 This is dated -- the first e-mail is from
10:23:13 6 Mr. Mortelliti; correct? The one on the bottom dated
10:23:20 7 September 1, 2010, 10:45 a.m. True?

10:23:23 8 A. I believe that's correct, yes.

10:23:24 9 Q. And he's sending it out to Dugger and Humphries, true?

10:23:29 10 A. That's correct.

10:23:35 11 Q. And the subject is "DEA speaking points."

10:23:37 12 Do you see that?

10:23:37 13 A. I do.

10:23:37 14 Q. The DEA is still inspecting, according to the e-mail memo
10:23:41 15 we saw, they were still incoming on 9-1-2010. True?

10:23:50 16 A. According to the memo of Exhibit 32, and the DEA was on
10:23:55 17 site in the Indianapolis distribution center on September 1st,
10:23:58 18 yes.

10:23:58 19 Q. This says, "Terrence, this is for the DEA. The corrections
10:24:06 20 listed below have been updated. It is okay to review this with
10:24:09 21 the agents."

10:24:09 22 And he's talking about DEA agents, is he not?

10:24:19 23 A. I don't know exactly what Mr. Mortelliti meant when he
10:24:20 24 wrote this e-mail, although that's sensible reading of the
10:24:24 25 e-mail.

—Vernazza (By Video Deposition)—

10:24:25 1 Q. He is -- Mr. Mortelliti is telling these two gentlemen
10:24:36 2 about a PowerPoint, about speaking points to the DEA with
10:24:38 3 respect to the suspicious order monitoring procedures, is he
10:24:41 4 not?

10:24:48 5 A. This appears to address speaking points that were put
10:24:50 6 together and Mr. Mortelliti indicates in the second e-mail for
10:25:02 7 the DEA agents if they come to your facilities.

10:25:03 8 Q. Sir, let's go to the second e-mail, up above,
10:25:06 9 Mr. Mortelliti, "John, this is 7 minutes later, September 1,
10:25:13 10 2010, now it's to a larger group of folks at CVS, subject, DEA
10:25:17 11 speaking points. Importance, high.

10:25:21 12 "Team, these are the final approved speaking points
10:25:28 13 for the DEA agents if they come to one of your facilities and
10:25:32 14 request suspicious monitoring."

10:25:39 15 He states next: "It is okay to share this document."
10:25:48 16 Look what he says next to these CVS folks that are going to be
10:25:51 17 interacting to the DEA. He says next, "Please be sure your
10:25:54 18 team understands it. It is -- understands it before
10:26:00 19 presenting."

10:26:01 20 He's telling them that because they don't know
10:26:03 21 anything about your suspicious order monitoring policies at
10:26:07 22 this point; correct?

10:26:09 23 He's saying, "Read it, understand it, before you
10:26:11 24 present it." Isn't that what he says?

10:26:15 25 Sir, is that what he says?

—Vernazza (By Video Deposition)—

10:26:16 1 A. Could you repeat your question?

10:26:17 2 Q. Does he say, "Please be sure your team understands it
10:26:21 3 before presenting?"

10:26:23 4 And he's talking about the PowerPoint on suspicious
10:26:27 5 monitoring. True? Is that true?

10:26:29 6 A. I don't know exactly what Mr. Mortelliti is referring to.
10:26:34 7 He seems to be referring to in this e-mail the PowerPoint that
10:26:41 8 he was attaching.

10:26:41 9 Q. He does not. So he says, please be sure your team
10:26:44 10 understands it before presenting so it doesn't look like a prop
10:26:50 11 instead of a tool." Is that what he says --

10:26:58 12 A. He does.

10:27:00 13 Q. -- he wants to make sure the suspicious order monitoring
10:27:04 14 policies look like a tool instead of a prop in the eyes of the
10:27:11 15 DEA; right? Is that what he says?

10:27:16 16 A. I do not have corporate knowledge that that's what
10:27:18 17 Mr. Mortelliti was saying. He says in this e-mail, which I
10:27:25 18 understand, "so it doesn't look like a prop" --

10:27:28 19 Q. Right.

10:27:28 20 A. -- "instead of a tool."

10:27:29 21 Q. Right. And a tool is something you use; right?

10:27:31 22 A. Right.

10:27:32 23 Q. And a prop is something make believe on the set of a play;
10:27:35 24 right? Is that right, sir?

10:27:37 25 A. I don't know if that's the way that Mr. Mortelliti was

—Vernazza (By Video Deposition)—

10:27:39 1 using the word there.

10:27:40 2 Q. Well, what do you think? Tool is something you use; right?

10:27:43 3 A. A tool can be something you use.

10:27:44 4 Q. A prop is something that's kind of make believe that's on
10:27:47 5 the stage of a play, right? Isn't that a common understanding?

10:27:50 6 A. I'm familiar with that usage of the word.

10:27:54 7 Q. And if Mr. Mortelliti wants the people at the distribution
10:27:57 8 centers to create the impression that these policies are
10:28:03 9 actually a tool instead of a prop, he's asking these folks to
10:28:10 10 mislead the DEA; correct?

10:28:12 11 A. I don't have knowledge that that's the case.

10:28:15 12 Q. They've never seen or used these policies before. They're
10:28:18 13 not a tool. They've never been used; right? They've never
10:28:21 14 been used at this point in time, sir, these policies have never
10:28:25 15 been used. True?

10:28:27 16 A. That's inconsistent with my understanding of the process
10:28:31 17 that was in place. Mr. Mortelliti had been reviewing and
10:28:34 18 conducting due diligence on potentially suspicious orders at
10:28:43 19 this point in time for, as I understand it, more than a year.

10:28:44 20 If you look at what was marked as Exhibit 9 -- sir, I
10:28:50 21 need to refer to this document in order to answer your question
10:28:53 22 because this document speaks to the process of reviewing the
10:28:59 23 IRR report, moving in September of 2010 from being centrally
10:28:59 24 reviewed in the Lumberton distribution center.

10:28:59 25 Q. This is --

—Vernazza (By Video Deposition)—

10:29:10 1 A. As I understand it, in the document we looked at in
10:29:12 2 Exhibit 9, a review the IRR report being moved from primarily
10:29:21 3 performed of the central location in New Jersey. And then it
10:29:25 4 says, "During the month of September 2010 the report will be
10:29:28 5 transitioned to each pharmacy DC and the following procedures
10:29:34 6 will apply."

10:29:34 7 The procedures that I understand Mr. Mortelliti to
10:29:39 8 have sent out in -- at the end of August were procedures to be
10:29:42 9 followed by the individual personnel who were performing those
10:29:49 10 reviews in or around that time in the individual DC's. Prior
10:29:57 11 to that time Mr. Mortelliti had been conducting that review
10:30:00 12 himself at the Lumberton distribution center.

10:30:04 13 Q. Let's look now -- now, let's look at the PowerPoint that
10:30:08 14 was given to folks at the distribution center for their
10:30:17 15 representations to the DEA. All right? It's Exhibit 31. It's
10:30:23 16 titled "Suspicious Order Monitoring For PSE/Controlled Drugs,"
10:30:26 17 and it's dated August 27, 2010; correct?

10:30:29 18 A. Yes. I understand from talking to Mr. Mortelliti that this
10:30:32 19 was a document that he put together for the purposes of
10:30:35 20 training personnel in the individual distribution centers to in
10:30:39 21 some capacity take over some of the responsibilities that he
10:30:42 22 had been performing at the Lumberton distribution center.

10:30:44 23 Q. And I would -- August 25, 2010. Would this be the first
10:30:49 24 time that the effective, actually in-place standard operating
10:31:00 25 procedures would have had an operable in effect section on

—Vernazza (By Video Deposition)—

10:31:05 1 suspicious order monitoring?

10:31:07 2 A. As I said, the process for reviewing suspicious order
10:31:12 3 monitoring -- or, excuse me -- the suspicious order monitoring
10:31:16 4 process was in place prior to this document. Based on my
10:31:23 5 corporate understanding -- corporate knowledge, it is my
10:31:25 6 understanding that this document reflects the first time in
10:31:29 7 which the draft component of the written document that speaks
10:31:37 8 to suspicious order monitoring was taken out of draft form.

10:31:44 9 Q. All right. And let me ask you again. I want you to listen
10:31:47 10 to my question very carefully if you would, please. I'm not
10:31:50 11 asking you what's in place, what isn't in place. I'm very
10:31:52 12 simply asking: The standard operating procedures dated 8-25-10,
10:31:58 13 would this be the first time that the standard operating
10:32:02 14 procedures have in place the suspicious order monitoring
10:32:08 15 procedures that are actually being utilized?

10:32:14 16 A. It was the company's procedure to review the IRR reports
10:32:21 17 prior to this time. This is the first time that the written
10:32:30 18 policy and procedure to my knowledge was updated to reflect
10:32:30 19 that process.

10:32:33 20 Q. And the IRR report, that is the report that would provide a
10:32:37 21 scoring with respect to an order for a controlled substance;
10:32:42 22 correct?

10:32:45 23 A. The IRR report was generated based on a number of
10:32:52 24 algorithms and would eventually combine some of those factors
10:32:55 25 and attributes to produce a score. That item would then be

—Vernazza (By Video Deposition)—

10:33:03 1 subject to manual review, consulting additional resources as
10:33:08 2 appropriate.

10:33:10 3 Q. So the IRR report -- that's all I want to talk about at
10:33:14 4 this point. We'll go step by step. The IRR report, then,
10:33:19 5 reflects the evaluation and the scoring of a specific order for
10:33:23 6 a controlled substance; right?

10:33:25 7 A. The IRR report would include specific orders of controlled
10:33:33 8 substance that met the criteria for conclusion on the report.

10:33:36 9 Q. The IRR report then, again, what makes the IRR report is
10:33:39 10 something that's being flagged for some reason is passed
10:33:45 11 through the algorithms. It appears that this is an order that
10:33:48 12 might potentially be suspicious, so now it appears in the IRR
10:33:59 13 report; is that correct?

10:33:59 14 A. That sounds consistent with my understanding.

10:34:01 15 Q. If we go to the item review report, Paragraph 4, it states,
10:34:12 16 "Currently the item review report, IRR, for controlled drugs is
10:34:12 17 being reviewed in a central location in New Jersey."

10:34:15 18 Is that what it states?

10:34:16 19 A. It does.

10:34:22 20 Q. Where in New Jersey?

10:34:23 21 A. My understanding is the Lumberton, New Jersey distribution
10:34:27 22 center where Mr. Mortelliti was based.

10:34:29 23 Q. And can you tell me unwritten policies and procedures, what
10:34:33 24 were in place with respect to the required due diligence review
10:34:38 25 of a flagged order on the IRR from '09 to early '10?

—Vernazza (By Video Deposition)—

10:34:45 1 A. I understand that Mr. Mortelliti's practice would have been
10:34:47 2 to review the report on a daily basis and to determine whether
10:34:56 3 items on the report warranted further review and due diligence
10:35:03 4 and conduct that review and due diligence as he deemed
10:35:07 5 appropriate.

10:35:08 6 Q. Was Mr. Mortelliti stopping orders that were flagged in the
10:35:12 7 IRR prior to the due diligence in '09 into '10?

10:35:18 8 A. From what I understand, based on my discussions with
10:35:21 9 Mr. Mortelliti, if he had an order that he was conducting
10:35:30 10 further due diligence on and had not yet reached a conclusion
10:35:34 11 that it wasn't suspicious, he would call or e-mail, typically
10:35:43 12 call, the distribution center in order to have that order held
10:35:48 13 while the further due diligence was being conducted, and after
10:35:56 14 making a determination that the order was not suspicious, tell
10:36:00 15 the distribution center that they could release the order.

10:36:04 16 Q. In '09 and '10, did Mr. Mortelliti or any -- anyone at CVS,
10:36:14 17 identify, stop and report to the DEA a suspicious order at any
10:36:19 18 time?

10:36:19 19 A. I'm not aware during that time period that Mr. Mortelliti
10:36:26 20 identified any orders that were deemed suspicious and reported
10:36:30 21 to the DEA.

10:36:35 22 MR. LANIER: Your Honor, that concludes the offer from
10:36:37 23 the lawyer -- in-house lawyer Mark Vernazza.

10:36:45 24 Our next witness is via live video hook-up. He is in
10:36:49 25 Dallas to testify where part of our team is as well and we need

—Vernazza (By Video Deposition)—

10:36:54 1 probably the time to test --

10:36:57 2 THE COURT: We'll take -- five. We'll take our
10:37:00 3 midmorning break, ladies and gentlemen. 15 minutes, usual
10:37:04 4 admonitions and then we'll pick up with the next witness by
10:37:07 5 video.

10:37:17 6 (Jury excused from courtroom)

10:50:06 7 (Recess was taken from 10:37 a.m. till 10:53 a.m.)

10:54:35 8 (Jury returned to courtroom at 10:54 a.m.)

10:54:35 9 THE COURT: Okay. Please be seated, ladies and
10:54:37 10 gentlemen.

10:54:37 11 Mr. Lanier, you may proceed.

10:54:39 12 MR. LANIER: Thank you, Your Honor.

10:54:40 13 We are calling Mr. Brad Nelson back to the stand.
10:54:46 14 Mr. Nelson testified by deposition in I believe the first week
10:54:52 15 of trial. He is in Dallas, Texas, right now at his lawyer's
10:54:56 16 office, and we see him on the video hook-up.

10:55:01 17 And, Your Honor, we are ready to go when you are.

10:55:06 18 THE COURT: Okay. All set.

10:55:15 19 MR. LANIER: We do not have a court reporter there,
10:55:17 20 Your Honor, so you'll need to administer the oath from here.

10:55:19 21 THE COURT: Oh, right. Thank you.

10:55:21 22 All right. Good morning, Mr. Nelson.

10:55:25 23 Can you hear me all right? Can you hear me okay?

10:55:28 24 THE WITNESS: Yes, sir.

10:55:29 25 THE COURT: Okay. If you could raise your right hand,

—Nelson (Cross by Lanier)—

10:55:31 1 sir.

10:55:32 2 Do you swear or affirm that the testimony you are
10:55:35 3 about to give will be the truth, the whole truth, and nothing
10:55:37 4 but the truth under pain and penalty of perjury?

10:55:41 5 THE WITNESS: I do.

10:55:42 6 THE COURT: Thank you very much.

10:55:42 7 CROSS-EXAMINATION OF BRAD NELSON

10:55:46 8 BY MR. LANIER:

10:55:46 9 Q. Mr. Nelson, I assume you don't -- are you -- you're not
10:55:51 10 able to see me, are you?

10:55:54 11 A. There's a small window, sir, where I can see you in the
10:55:57 12 video screen in the right.

10:55:58 13 Q. Okay. Good. I didn't know if you'd be able to see me or
10:56:02 14 not.

10:56:02 15 I met you once before. My name is Mark Lanier. I
10:56:07 16 think the video screen is in part this, but I took your
10:56:09 17 deposition in this case; is that right?

10:56:13 18 A. That is correct.

10:56:14 19 Q. And I see you've got Ms. Knight next to you,
10:56:18 20 Camille Knight. She is your lawyer, and you are with her there
10:56:20 21 in her Dallas office today; is that correct?

10:56:24 22 A. That is correct.

10:56:25 23 Q. All right. Well, thank you for taking time out. I know
10:56:27 24 that you've got a limited amount of time today. I've got a
10:56:30 25 very short road for you. My goal is to spend no more than

—Nelson (Cross by Lanier)—

10:56:35 1 two hours with you. The road is what I've called reminders and
10:56:43 2 then what I'm calling policies and actions.

10:56:45 3 Do you see that, sir?

10:56:47 4 A. I do.

10:56:48 5 Q. Okay. And the reminders is just to help the jury remember
10:56:51 6 over the course of three or four weeks now they've heard a lot
10:56:55 7 of different witnesses, and they need to remember who you are
10:56:57 8 to help plug in to what you've already said so I don't need to
10:57:01 9 walk back through it all.

10:57:02 10 Does that make sense?

10:57:04 11 A. I understand.

10:57:05 12 Q. And then do you also understand that just in the last
10:57:08 13 couple of weeks, certainly since your deposition I should say,
10:57:12 14 we've gotten some more documents that have your name on them
10:57:16 15 and that is why the Court has entitled me to put you back on
10:57:19 16 the stand to ask you questions that those documents have called
10:57:24 17 forth.

10:57:25 18 Does that make sense?

10:57:28 19 A. That's the way I understand it.

10:57:29 20 Q. And I'm not suggesting to you or the jury or to anybody
10:57:32 21 that His Honor certainly not, that you had done anything remiss
10:57:37 22 in our receiving those documents after your deposition. I
10:57:43 23 don't think you were the one in control of giving us the
10:57:45 24 documents. Is that fair to say?

10:57:47 25 A. That would be accurate.

—Nelson (Cross by Lanier)—

10:57:51 1 Q. All right. So what I've done is I've taken the notes that
10:57:54 2 you and I made -- well, I made the notes -- in the deposition.
10:58:00 3 They've been edited slightly to reflect what we played in
10:58:04 4 court, but I want to make sure as part of the reminders that we
10:58:07 5 just remember who you are and the points that we covered the
10:58:10 6 first time you gave your testimony in this case. All right?

10:58:17 7 A. Yes.

10:58:17 8 Q. So this is one of those sheets that we made. Your Walmart
10:58:24 9 career, you made the point in your deposition your professional
10:58:27 10 life was more than your Walmart career, but your Walmart career
10:58:31 11 was from 1983 through 2017.

10:58:36 12 Is that still who you are?

10:58:40 13 A. That is correct.

10:58:44 14 Q. All right. And then we talked about your job at Walmart.
10:58:45 15 And you had different jobs over the year -- over the years
10:58:52 16 plural, but I focus with you as your job as the senior manager
10:58:59 17 for controlled substances for regulatory affairs.

10:59:04 18 Do you remember that?

10:59:04 19 A. That is one of the jobs I held.

10:59:06 20 Q. And in that regard I talked to you a lot. In fact, I tried
10:59:09 21 to keep the exhibit that we used in your deposition about your
10:59:14 22 application for that job.

10:59:20 23 Do you recall those discussions we had?

10:59:21 24 A. We had many discussions about the application process.

10:59:24 25 Q. We did. I went over it probably till you were having

—Nelson (Cross by Lanier)—

10:59:28 1 nightmares afterwards for weeks.

10:59:31 2 But my big question to you was whether or not you were
10:59:34 3 set up to fail because of your qualifications. And I don't
10:59:38 4 mean to insinuate that you have failed, but I just question
10:59:43 5 whether or not the job as set out by Walmart was one that you
10:59:46 6 were the best fit for.

10:59:48 7 Do you remember those discussions?

10:59:50 8 A. I remember those questions, yes.

10:59:52 9 Q. And that's why we looked at what has been marked as
10:59:58 10 Plaintiffs' Exhibit 7174, and it was your job detail for the
11:00:08 11 job you applied for and ultimately won.

11:00:09 12 Do you remember that?

11:00:13 13 A. I do remember that document.

11:00:14 14 Q. And I've got Ms. Fleming passing it out to the opposing
11:00:24 15 counsel, so just bear with me for one moment while they get a
11:00:26 16 copy of it.

11:00:29 17 Thank you, Maria.

11:00:31 18 And in that, for the job requirements -- by the way,
11:00:35 19 you didn't write these job requirements, did you?

11:00:39 20 A. No, sir.

11:00:40 21 Q. This was done by the company and you just applied for the
11:00:45 22 job; right?

11:00:47 23 A. I applied for the job, but I do not know who wrote that.

11:00:53 24 Q. So the minimum qualifications by the company we're almost
11:00:56 25 through reviewing here, but it did not require that you had any

—Nelson (Cross by Lanier)—

11:01:00 1 DEA training. True?

11:01:03 2 A. I don't see that listed, sir.

11:01:06 3 Q. Right. And they didn't list here any kind of legal
11:01:10 4 training that you needed as well, did they?

11:01:13 5 A. No, I don't see that listed either.

11:01:15 6 Q. So you were put in charge of, in essence, a legal
11:01:20 7 compliance in part without legal training and DEA training.

11:01:25 8 Is that fair to say?

11:01:28 9 MR. MAJORAS: Objection.

11:01:29 10 THE COURT: Overruled.

11:01:33 11 THE WITNESS: I don't know if I was put in charge of
11:01:35 12 that. It was part of my responsibility.

11:01:38 13 BY MR. LANIER:

11:01:38 14 Q. And -- okay. That's fair. That's fair. That's fair.

11:01:43 15 I also -- in the process we talked -- we kind of put a
11:01:51 16 timeline together that I may go back and reference shortly, but
11:01:54 17 we looked at some of the requirements under the law that fell
11:01:57 18 under your umbrella of responsibility.

11:02:01 19 Do you remember that?

11:02:05 20 A. We talked about many requirements.

11:02:06 21 Q. Yes, sir. Exactly. We talked about the legal requirement
11:02:11 22 for corresponding responsibility. We talked about professional
11:02:16 23 practice, and we talked about effective controls and
11:02:23 24 procedures, both with the federal government and with Ohio
11:02:26 25 regulations.

—Nelson (Cross by Lanier)—

11:02:26 1 You remember all of that?

11:02:28 2 A. I do remember some of that, yes, sir.

11:02:29 3 Q. Okay. Thank you, sir.

11:02:31 4 And with that stroll down reminder lane, I next want
11:02:37 5 to just talk about policies and actions. And I think these
11:02:42 6 documents that I'm showing you are all new documents that I did
11:02:46 7 not have at the time of your deposition, but they do echo a
11:02:54 8 theme of other documents that we looked at. Okay?

11:02:59 9 A. Okay.

11:03:01 10 Q. In the timeline that we were working on, if I put it back
11:03:11 11 up, you were taking your new job and by January of 2013 you
11:03:19 12 were in that new job. Is that fair to say?

11:03:24 13 A. I was in that new job in January of 2011.

11:03:28 14 Q. Okay. So you had already been in that job -- oh, that's
11:03:34 15 why we had -- you had already been e-mailing about the CVS
11:03:37 16 problems on red flags; correct?

11:03:43 17 A. Certainly we had some e-mails sent during the first
11:03:46 18 three years -- the first two years of my job, yes.

11:03:48 19 Q. And you were there when the *Holiday* decision came out in
11:03:52 20 the federal register; right?

11:03:55 21 A. Yes. You reminded me it was called the *Holiday*.

11:03:58 22 Q. And that was something that was notable, I mean, that was
11:04:01 23 something that brought to your attention certain obligations if
11:04:09 24 you didn't already know them; right?

11:04:12 25 A. Is certainly brought up information that happened to that

—Nelson (Cross by Lanier)—

11:04:15 1 pharmacy or that chain.

11:04:16 2 Q. And then in the timeline of your deposition, I had as
11:04:22 3 March 26th, 2013, this first quotation that "No blanket
11:04:27 4 refusals are allowed by boards of pharmacy."

11:04:31 5 Do you remember that?

11:04:34 6 A. I don't know what the date is about, but that information
11:04:37 7 was consistent with Walmart policy from the time I took the job
11:04:40 8 to that point.

11:04:40 9 Q. Yes. And that's the key that I want to emphasize, what you
11:04:45 10 are here doing is expressing Walmart policy; is that right?

11:04:54 11 A. I'm speaking about the policy that was in place when I was
11:04:56 12 in that role.

11:04:58 13 Q. Right. And that's a Walmart policy that was in place;
11:05:02 14 correct?

11:05:03 15 A. That is correct.

11:05:05 16 Q. Your job was to see that the company's policies were taught
11:05:11 17 and carried out. Is that fair?

11:05:16 18 A. Yeah, my responsibility in the process of policy was
11:05:19 19 communication and training.

11:05:20 20 Q. In other words, the policies would be set by Walmart, you
11:05:25 21 were in charge of training people to make sure they followed
11:05:28 22 those policies and communicating those policies to the people.
11:05:32 23 Fair?

11:05:34 24 A. My job was to communicate the policies and train them about
11:05:37 25 the policies. It was not to enforce that they were followed.

—Nelson (Cross by Lanier)—

11:05:41 1 Q. Got it. Thank you.

11:05:44 2 Now, in that regard, you'll recall in your deposition
11:05:51 3 I kept going back to the way you would cut and paste the same
11:06:01 4 policy language into so many of your replies when people would
11:06:07 5 question you about how to do things. Remember?

11:06:09 6 A. Yes, sir, but I also want to remind you that it was not
11:06:12 7 just me sending out that information, my colleagues were also
11:06:16 8 sending that same information.

11:06:17 9 Q. Right. You had two people that worked with you in that
11:06:20 10 section; is that right?

11:06:24 11 A. We both had -- all three of us had the same job
11:06:29 12 responsibilities, yes, sir. They didn't work with me, they had
11:06:31 13 the same -- a different geographical remember.

11:06:34 14 Q. But again -- I apologize. I've got to be very careful not
11:06:37 15 to interrupt you, especially on video because it will mess
11:06:40 16 everything up and you won't know it. So I'll be careful to
11:06:44 17 listen better.

11:06:44 18 But again, all three of you wore, I won't say the same
11:06:50 19 handcuffs, but all three of your hands were tied --

11:06:53 20 MR. MAJORAS: Objection, Your Honor.

11:06:54 21 Q. -- about whatever Walmart policy was.

11:06:56 22 THE COURT: Yeah. Sustained. Sustained.

11:06:58 23 BY MR. LANIER:

11:06:58 24 Q. Okay. All three of you had to follow Walmart policy,
11:07:00 25 didn't you?

—Nelson (Cross by Lanier)—

11:07:01 1 A. Yes, sir.

11:07:02 2 Q. Okay. So when you say they were in the same job as you,
11:07:06 3 they're also following Walmart policy, they're also training
11:07:10 4 others in how to follow that policy; is that right?

11:07:15 5 A. I can't speak for the actual performance, but that is what
11:07:20 6 we were instructed to do, yes.

11:07:21 7 Q. Okay. In that regard, sir, Walmart had a policy of not
11:07:28 8 allowing a blanket refusal to fill at this time; right?

11:07:34 9 A. That is the information that was being communicated at that
11:07:37 10 time.

11:07:37 11 Q. And you were told that that's because the boards of
11:07:41 12 pharmacy would not allow it, weren't you?

11:07:45 13 A. I don't know that I was told that, but that was the
11:07:47 14 guidance that we were being given.

11:07:48 15 Q. All right. But at least for your purposes, because I took
11:07:54 16 you to task on this and said, where did a board of pharmacy
11:07:57 17 ever say it to you, recognizing there are 50 boards of
11:08:02 18 pharmacies among the 50 states; right?

11:08:06 19 A. That's correct.

11:08:07 20 Q. And, so, within the framework of that, my question to you
11:08:12 21 was repeatedly, where did you get it from, and you got it from
11:08:16 22 others at Walmart, it was Walmart policy and understanding;
11:08:20 23 right?

11:08:22 24 A. That is correct.

11:08:25 25 Q. And, so, for example, I would like you to -- do you have a

—Nelson (Cross by Lanier)—

11:08:31 1 set -- I sent Rachel and Jessie there with a set of exhibits.

11:08:37 2 Do you have Plaintiffs' Exhibit 14643?

11:08:40 3 And, Ms. Fleming, if you would pass that out.

11:08:42 4 I've got it, I can put it on this overscreen so that
11:08:46 5 you can see it if you don't have ready access to it, sir.

11:08:53 6 A. 14643?

11:08:55 7 Q. Yes, sir. It's an e-mail from you that's dated
11:08:58 8 January 28th of 2013. So we're back in this time period of
11:09:08 9 that Walmart policy.

11:09:16 10 Have you had a chance to grab that, sir, or can you
11:09:17 11 see it on the screen?

11:09:18 12 A. Yes, sir, I have it. There are several pages of that for
11:09:20 13 me. Is it multiple copies, is that what I have?

11:09:23 14 Q. I don't think you've got multiple copies. I think what
11:09:26 15 happens is you've got the first page reference in the e-mail is
11:09:33 16 at the bottom of Page 2, and this is before you get added to
11:09:37 17 the e-mail chain. It's from John -- how do I say -- do I say
11:09:42 18 his name Loranger?

11:09:45 19 A. I believe.

11:09:46 20 Q. To John Smasal and it's on Halloween, 2012.

11:09:57 21 Do you see that?

11:10:06 22 A. Yes, sir.

11:10:06 23 Q. I found that.

11:10:08 24 Yeah. So this says that all of the registered
11:10:12 25 pharmacists are using the PMP website.

—Nelson (Cross by Lanier)—

11:10:18 1 What do you understand PMP to stand for?

11:10:27 2 A. Prescription monitoring program.

11:10:28 3 Q. And in Ohio it's called the OARRS program, but this is just
11:10:35 4 a common abbreviation used across the industry for those
11:10:39 5 programs; right?

11:10:40 6 A. I believe that's accurate.

11:10:41 7 Q. All right. All registered pharmacists are using the
11:10:46 8 prescription monitoring program for all oxy 30 and any other
11:10:54 9 prescription fills that they deem necessary based on the
11:10:55 10 judgment.

11:10:56 11 Do you see that?

11:10:59 12 A. That is what the document says.

11:11:08 13 Q. And then it says -- well, they are noting there finding on
11:11:11 14 the prescription and in the patient notes as well, and it just
11:11:15 15 continues to look at a situation where ultimately it says, "In
11:11:20 16 speaking to the prescription staff, they do have concerns about
11:11:23 17 the prescribing practices of a few doctors."

11:11:27 18 Do you see that?

11:11:30 19 A. I see what's highlighted, yes.

11:11:32 20 Q. And the reply from John Loranger, up above, or the next
11:11:40 21 e-mail from John Loranger, is actually January 25th on this
11:11:44 22 chain. So we're a couple of months later when he sends a
11:11:47 23 reply -- sends a follow up.

11:11:51 24 Do you see? Are you able to see it, sir?

11:12:00 25 A. I do see it.

—Nelson (Cross by Lanier)—

11:12:01 1 Q. And in that follow up he says, "The grants pass
11:12:06 2 prescription is insisting that Dr. Linda Picker Johnson is like
11:12:10 3 a revolving door of scripts. They're establishing patient
11:12:15 4 prescriber relations and they all seem to meet the
11:12:19 5 requirements, it's just the volume of narcotic scripts that
11:12:24 6 come from this office that is astonishing."

11:12:27 7 Do you see that, sir?

11:12:32 8 A. I see what's written there, yes, sir.

11:12:33 9 Q. And then the reply is, "This is one of the two stores that
11:12:38 10 we had concerns about the quantity of C-II."

11:12:45 11 Those are Schedule II controlled drugs; right?

11:12:48 12 A. Yes, sir.

11:12:50 13 Q. That would include Oxycontin and oxycodone, and then I
11:12:56 14 think October of 2014, hydro -- all the hydro was moved from
11:13:03 15 Schedule III to II, but at this point in time hydro is
11:13:07 16 Schedule III; correct?

11:13:08 17 A. I believe that's accurate.

11:13:09 18 Q. "This is one of the two stores we had concerns about the
11:13:12 19 quantity of C-II prescriptions being processed. Can some
11:13:18 20 analysis be done to get an understanding of controlled
11:13:22 21 substance prescriptions coming from this doctor? If the
11:13:27 22 pharmacists are feeling uncomfortable with this doctor's
11:13:30 23 prescribing habits, I will ask for your advice how to best
11:13:34 24 handle."

11:13:34 25 Do you see that?

—Nelson (Cross by Lanier)—

11:13:35 1 A. That's what the document says.

11:13:36 2 Q. All right. And then we move to the front page where
11:13:38 3 ultimately you get called in on this and you send an e-mail out
11:13:44 4 about a week later.

11:13:46 5 Do you see that? Are you able to see it?

11:13:55 6 A. I see it.

11:13:57 7 Q. You said, "Gentlemen, I hope you had a great weekend. This
11:14:03 8 issue of heavy writers of C-II and other controlled substance
11:14:08 9 prescriptions comes up frequently across our trade area. It's
11:14:11 10 impossible for any of us here in the home office, or for you as
11:14:14 11 regional and market directors, to make a determination of the
11:14:19 12 validity of these prescriptions."

11:14:21 13 Do you see where I'm reading?

11:14:24 14 A. I see what you've highlighted, yes, sir.

11:14:28 15 Q. "The state boards of pharmacies grant the pharmacists
11:14:32 16 professional judgment that can be exercised when the controlled
11:14:35 17 substance prescription is presented. We have multiple POMs
11:14:40 18 available to assist the pharmacists in making such decisions."

11:14:43 19 Do you see that as well?

11:14:46 20 A. I see what you've highlighted, sir.

11:14:48 21 Q. Do you remember what POM stands for?

11:14:54 22 A. Pharmacy operations manual.

11:14:57 23 Q. And that's something that was -- the Walmart set of
11:15:02 24 policies; right?

11:15:07 25 A. Walmart set of policies, yes, sir.

—Nelson (Cross by Lanier)—

11:15:11 1 Q. You put in here this sentence that we see over and over,
11:15:17 2 they are not allowed to blanket refuse prescriptions from a
11:15:23 3 prescriber's office. That authority is granted to only the
11:15:28 4 state medical board who will suspend a prescriber's license if
11:15:32 5 they believe the prescriber is a threat to public safety.

11:15:38 6 Did I read that correctly?

11:15:39 7 A. That's what the document says.

11:15:39 8 Q. And this is what you were told was Walmart policy; correct?

11:15:47 9 A. That was my understanding of the policy.

11:15:49 10 Q. And the reason you repeat this mantra over and over and
11:15:54 11 over again is because you're putting out there what Walmart
11:16:00 12 policy is; right?

11:16:02 13 A. That was my understanding at the time, but again, I want to
11:16:04 14 remind you I'm not the only one sending that information out.

11:16:08 15 Q. Right. It's not as if you misunderstood Walmart policy;
11:16:12 16 right?

11:16:13 17 A. That is correct.

11:16:14 18 Q. So this is a blanket that I have drawn, and a blanket is
11:16:25 19 something that covers up other things; right?

11:16:35 20 A. That may be your definition, sir.

11:16:37 21 Q. Well, I mean, it's pretty decent. You're in a -- you live
11:16:41 22 in Arkansas, don't you?

11:16:45 23 A. Yes, sir.

11:16:46 24 Q. Don't you all also call blankets covers?

11:16:56 25 A. I don't know if it would be called a blanket.

—Nelson (Cross by Lanier)—

11:16:59 1 Q. Doesn't matter. My point is a blanket refusal to fill
11:17:04 2 means we are not going to fill any prescriptions from that
11:17:10 3 doctor; right?

11:17:15 4 A. That is the definition.

11:17:22 5 Q. So in a sense it says, based on our information, this is
11:17:25 6 not a doctor that we're comfortable filling prescriptions for
11:17:31 7 so we will issue a blanket refusal to fill; right?

11:17:40 8 A. Again, we didn't have a blanket to refuse to fill policy or
11:17:43 9 program in place so I don't know what actually would have done.

11:17:45 10 Q. And I understand that. I'm just making sure we understand
11:17:47 11 that when you say they're not allowed to blanket refuse
11:17:50 12 prescriptions that's because your understanding of Walmart
11:17:55 13 policy and that of your cohorts was that it had to be done on a
11:18:00 14 prescription-by-prescription basis, it couldn't be done as
11:18:04 15 blanket for a full cover; right?

11:18:07 16 A. That was the guidance that was being given at the time,
11:18:09 17 yes, sir.

11:18:09 18 Q. And that guidance that was given at the time was given to
11:18:14 19 you and you were then passing it on to others. Fair?

11:18:18 20 A. I want to make it clear, again, that I'm not the only one
11:18:22 21 that had that information. My colleagues did this as well.

11:18:24 22 Q. And I don't mean to insinuate that you were the only one.
11:18:30 23 You're just the only one under oath right now, so you're the
11:18:33 24 only one I can ask about. Okay?

11:18:36 25 A. I understand.

—Nelson (Cross by Lanier)—

11:18:37 1 Q. And you can continue -- I'm not trying to cut you off from
11:18:40 2 saying, hey, others were teaching the same policy. I'm not
11:18:44 3 trying to cut you off. I just want you to understand I'm not
11:18:47 4 insinuating anything with my questions. Okay?

11:18:50 5 A. I understand.

11:18:51 6 Q. All right. Great.

11:18:52 7 Now, as a result, look at the next month. This is
11:18:58 8 Plaintiffs' Exhibit 26892.

11:18:59 9 Ms. Fleming, if you could give opposing counsel, and
11:19:04 10 Mr. Nelson, if you'd look, it's 26892.

11:19:28 11 A. Okay. I have it.

11:19:29 12 Q. Got it?

11:19:30 13 Let's start this one. This is a 4-page document. The
11:19:35 14 first e-mail is on the third page, the bottom half, and that's
11:19:39 15 where we'll start, and we'll bring ourselves up current from
11:19:44 16 there. Okay?

11:19:45 17 A. Okay.

11:19:45 18 Q. Now, it starts out February 21st of 2013, and again, you're
11:19:50 19 not on the initial e-mail. It hasn't bumped to your level yet.
11:19:55 20 You get on it in a little bit. You see?

11:19:59 21 A. I see the first portion, yes.

11:20:02 22 Q. It begins, "Hello, I'm sending this e-mail out because I
11:20:08 23 have great concern for a situation that could potentially
11:20:11 24 become bad. The wellness clinic of Roland is continually write
11:20:21 25 prescription for large numbers of multiple narcotic pain

—Nelson (Cross by Lanier)—

11:20:23 1 relievers."

11:20:25 2 Do you see that, sir?

11:20:26 3 A. That's what the document says.

11:20:27 4 Q. Other chain and independent pharmacies in the area have
11:20:34 5 stopped accepting prescriptions from this clinic. Now, the
11:20:41 6 sentence isn't over, but I want to pause there.

11:20:44 7 Do you see where I've paused?

11:20:45 8 A. I see what you've underlined.

11:20:50 9 Q. So this sentence is saying that others, unspecified chain
11:20:54 10 and independent pharmacies, but others have a blanket refusal
11:20:58 11 to fill; right?

11:21:04 12 A. I don't know if they have a blanket refusal to fill or not,
11:21:07 13 sir. It just says that these stores, according to this
11:21:10 14 pharmacy in that area, have stopped filling prescriptions for
11:21:12 15 that clinic.

11:21:13 16 Q. All right. Then I'm going to put that where I've written,
11:21:15 17 "Others have a blanket refusal to fill," I'm going to put
11:21:19 18 Mark Lanier on that because that's me saying it, but I'd like
11:21:22 19 to leave it on there because I want to challenge you a little
11:21:25 20 on it.

11:21:25 21 What would you, using Walmart terminology, what would
11:21:29 22 you call it if a chain or an independent pharmacy said we will
11:21:34 23 not accept any prescriptions from this clinic, period?

11:21:42 24 What would you call that?

11:21:43 25 A. When you -- when you say you're not going to fill

—Nelson (Cross by Lanier)—

11:21:47 1 prescriptions from a clinic, I'm not real sure what that is
11:21:49 2 because we've been talking about blanket refusal for particular
11:21:53 3 doctors. I don't know what a clinic means.

11:21:55 4 Q. Well, in that situation, let's say that the clinic has one
11:21:58 5 doctor. Would you call it a blanket refusal to fill from that
11:22:02 6 one doctor?

11:22:03 7 A. If that -- if the document stated that I would, yes.

11:22:07 8 Q. Would you -- what -- define for us, please, what a blanket
11:22:12 9 refusal to fill is in your terminology, Walmart's terminology.

11:22:18 10 A. I can't speak to Walmart's terminology because there was
11:22:20 11 not a blanket authorization -- excuse me, a blanket refusal to
11:22:25 12 fill program in place when I was there, so I can't answer that
11:22:30 13 question on Walmart's behalf.

11:22:31 14 Q. Sir, you've already -- we just looked at a document where
11:22:35 15 you specifically said that you're not allowed to issue a
11:22:41 16 blanket refusal on prescriptions. Remember?

11:22:50 17 A. That's true.

11:22:51 18 Q. So that was your language. What is a blanket refuse of
11:22:54 19 prescriptions?

11:22:56 20 A. Again, I'll remind you, Mr. Lanier, that's not my language,
11:22:59 21 that's what Walmart guidance was at the time.

11:23:02 22 Q. But you put it in there. You said it, sir. Plaintiffs'
11:23:09 23 Exhibit 14643 is your e-mail.

11:23:11 24 You're Brad Nelson, aren't you?

11:23:16 25 A. I am, sir.

—Nelson (Cross by Lanier)—

11:23:16 1 Q. And you said, "They are not allowed to blanket refuse
11:23:24 2 prescription from a prescriber's office."

11:23:25 3 Do you see that?

11:23:32 4 A. That is what that document says.

11:23:32 5 Q. That's what you said in that document, isn't it?

11:23:36 6 A. I believe that information comes directly from the POM sir.

11:23:41 7 Q. No, that wasn't my question, sir. I said, that's what you
11:23:46 8 said in that document, isn't it?

11:23:46 9 A. That's the information the POM said that I communicated in
11:23:50 10 this document, yes, sir.

11:23:51 11 Q. In other words, yes, Mr. Lanier, that's what I said in the
11:23:55 12 document, I got it from Walmart, right?

11:24:02 13 MR. MAJORAS: Objection. Badgering.

11:24:03 14 THE COURT: Overruled. Overruled.

11:24:05 15 THE WITNESS: Again, it looks like that information
11:24:09 16 came from the POM, and I put it in this e-mail.

11:24:11 17 BY MR. LANIER:

11:24:12 18 Q. So when you said they are not allowed to blanket refuse
11:24:15 19 prescription from a prescriber's office, what did you mean?

11:24:23 20 A. What the document states, they're not allowed to choose not
11:24:26 21 to fill prescriptions from a prescriber.

11:24:31 22 Q. What -- but I'm asking you, when does it mean to blanket
11:24:37 23 refuse prescriptions from a prescriber's office?

11:24:46 24 A. It would mean not to fill prescriptions for that
11:24:48 25 prescriber.

—Nelson (Cross by Lanier)—

11:24:49 1 Q. I'm sorry, from that what?

11:24:51 2 A. From that prescriber.

11:24:53 3 Q. But you said from his office. That would be like his
11:24:56 4 clinic.

11:24:58 5 A. I would assume most doctors work out of an office, sir.

11:25:02 6 Q. All right. So let's go back to this e-mail. "Other chain
11:25:07 7 and independent pharmacy in the area have stopped accepting
11:25:11 8 prescriptions from this clinic."

11:25:14 9 Do you see that?

11:25:16 10 A. That's what the document says.

11:25:18 11 Q. "Which is causing them to funnel in to our Walmart stores."
11:25:25 12 Y'all have become the funnel for these people. Do you
11:25:29 13 see that?

11:25:30 14 A. I see that that's that pharmacist's opinion.

11:25:38 15 Q. "Although a rise in business is good, this isn't the type
11:25:41 16 of business we want. A high percentage of these customers seem
11:25:44 17 suspicious and sometimes even lie about being short of
11:25:48 18 medication wasting our time having to check video on things.
11:25:51 19 We clearly double count and back count. They also flood our
11:25:55 20 phone lines daily asking if we have sufficient quantities of
11:26:00 21 oxy, roxy such."

11:26:02 22 Do you see that?

11:26:08 23 A. That is what the document says.

11:26:09 24 Q. "Also, with the recent actions against the Walgreens
11:26:13 25 pharmacies in Florida, I, along with our colleagues" -- then it

—Nelson (Cross by Lanier)—

11:26:17 1 names four others.

11:26:18 2 Do you see that?

11:26:20 3 A. That's what it says.

11:26:20 4 Q. -- "feel that we need to stop accepting prescriptions from
11:26:24 5 this clinic."

11:26:28 6 Do you see that?

11:26:33 7 A. Again, that's what it says.

11:26:34 8 Q. The pharmacists in these Walgreens stores have been called
11:26:37 9 in front of the DEA to be questioned on why they felt there's a
11:26:40 10 legitimate medical need for such high quantities and multiple
11:26:43 11 prescriptions for these drugs.

11:26:45 12 Are you still tracking with me?

11:26:47 13 A. That's what the document says.

11:26:49 14 Q. And then the document's got all capital letters, "There is
11:26:53 15 not (other than feeding addiction and diversion), not a single
11:27:03 16 one of us ever feel comfortable about filling these
11:27:06 17 prescriptions, and if questioned, we would not be able to
11:27:10 18 justify this type of prescribing."

11:27:15 19 Do you see that, sir?

11:27:22 20 A. That is what the document says.

11:27:22 21 Q. "We continue to fill them because if we call to verify
11:27:25 22 doctor/patient relationship, they tell us bogus information."

11:27:30 23 Do you see that as well?

11:27:32 24 A. That's what it says.

11:27:33 25 Q. "At first, they would not even verify the relationship

—Nelson (Cross by Lanier)—

11:27:40 1 stating it was a HIPAA breach."

11:27:43 2 You know what HIPAA is, don't you?

11:27:45 3 A. Yes, sir.

11:27:46 4 Q. It's a requirement to keep confidential certain patient
11:27:50 5 identification information; right?

11:27:53 6 A. That is one portion of it, yes, sir.

11:27:55 7 Q. "We stopped filling the oxy 30 due to this and they
11:27:59 8 suddenly changed their tune about providing us information, and
11:28:03 9 we can't possibly fill out forms for when we deny each of these
11:28:07 10 patients."

11:28:08 11 Do you see that?

11:28:11 12 A. That's what the document says.

11:28:12 13 Q. Because Walmart policy was if you're going to deny it, you
11:28:14 14 have to fill out this long form; right?

11:28:18 15 A. I don't know about a long form, but we asked them to fill
11:28:22 16 out a refuse to fill.

11:28:23 17 Q. If you'll look at the end of her e-mail on the next page,
11:28:27 18 I've highlighted this paragraph, "I think if we continue to do
11:28:32 19 this we're going to be in serious trouble and quickly trigger
11:28:36 20 an investigation. We don't want to continue filling from this
11:28:39 21 clinic. Other pharmacies are stopping, and I feel it's
11:28:42 22 imperative with follow suit. It will look bad if we're the
11:28:45 23 only -- if we are the ones allowing these drugs to be abused or
11:28:50 24 even on the street."

11:28:52 25 Did you see that?

—Nelson (Cross by Lanier)—

11:28:55 1 A. That's what the document says.

11:28:56 2 Q. And then this document gets sent to you with, "Brad, can
11:29:02 3 you give us some advice with this situation, please?"

11:29:05 4 Do you see that as well?

11:29:08 5 A. I do see that.

11:29:10 6 Q. And here is where you step into the picture and you send an
11:29:18 7 e-mail out February 22nd.

11:29:22 8 Do you see that e-mail? It's Page 1.

11:29:29 9 Well, before we do that, let's go to Page 2 because
11:29:32 10 you've actually e-mailed previously. Look at Page 2.

11:29:37 11 You said, "Here's a document we've used in the past to
11:29:41 12 assist stores and clubs when they're faced with fraudulent or
11:29:44 13 non-legitimate prescriptions being passed in their communities.
11:29:49 14 Feel free to use this and send to your market directors. This
11:29:53 15 is in pdf format, so I think they can send it directly to their
11:29:59 16 stores for guidance on how to handle fraudulent prescriptions
11:30:02 17 or suspected forgeries. State boards of pharmacy do not allow
11:30:07 18 for blanket refusals of all prescriptions from a prescriber.
11:30:13 19 They do allow the pharmacists to exercise their professional
11:30:16 20 judgment for individual prescriptions."

11:30:19 21 Do you see that?

11:30:22 22 A. Yes, sir.

11:30:23 23 Q. So when you got this e-mail for your advice on how others
11:30:29 24 have stopped accepting prescriptions from this clinic, of how
11:30:37 25 Walmart seems to be the only one that's doing it, you write

—Nelson (Cross by Lanier)—

11:30:40 1 back and say, we're not allowed to do that even though others
11:30:47 2 have?

11:30:52 3 A. That's what the document says.

11:30:54 4 Q. But you even here say this is -- here's some -- a pdf on
11:30:59 5 how to handle fraudulent prescriptions or suspected forgeries.
11:31:02 6 That wasn't the problem here. These weren't fraudulent, they
11:31:06 7 weren't forgeries. They were bad; right?

11:31:13 8 A. In this pharmacist's opinion, yes, sir, they were.

11:31:16 9 Q. In fact, you got a reply e-mail that said, "Brad, the thing
11:31:21 10 is, these aren't fraudulent or forged prescriptions. The
11:31:25 11 clinic is very much real and is prescribing these. But
11:31:31 12 professionally as a pharmacist the only reason these high
11:31:34 13 quantities would be needed are for addiction or diversion. I
11:31:40 14 could not justify a patient need for these medications if
11:31:43 15 questioned in court or by the DEA.

11:31:48 16 "Also, I did fill out web forms last summer regarding
11:31:53 17 some fraudulent prescriptions from some other sources other
11:31:56 18 than this clinic. I think I even have them on file in my
11:32:00 19 refusal fraudulent fill folder, along with the doctor -- some
11:32:05 20 doctor's statements. It concerns me you didn't get these."

11:32:09 21 Do you see that?

11:32:11 22 A. That's what that document says.

11:32:13 23 Q. And she's referencing your comment in the earlier e-mail
11:32:16 24 that "In the two years since this pharmacy operation manual
11:32:20 25 section was introduced, Store 388 has not submitted any refusal

—Nelson (Cross by Lanier)—

11:32:26 1 to fill or fraudulent activity web forms, therefore, its DEA
11:32:30 2 has not been notified of any non-legitimate prescription
11:32:32 3 activity in the area."

11:32:35 4 She says, "Well, I've sent them."

11:32:41 5 Do you see that?

11:32:42 6 A. I see what she says in the e-mail, yes, sir.

11:32:45 7 Q. And then you reply, and you say, "Leann, if you refuse to
11:32:52 8 fill these prescriptions, then this pharmacy operation manual
11:32:56 9 section applies and the web form should completed. If your
11:33:02 10 refusal to fill web forms were sent from Store 388, then there
11:33:06 11 may have been an error on the form which prevented the form
11:33:09 12 prosecute being submitted. All fields have to be completed for
11:33:14 13 the web form to be transmitted."

11:33:20 14 Is that right?

11:33:21 15 A. That is correct, sir.

11:33:21 16 Q. So the pharmacist can be filling out a form and submitting
11:33:25 17 a form of a refusal to fill to Walmart, and if they left
11:33:30 18 anything blank and didn't understand that they needed to fill
11:33:33 19 everything in, it just doesn't get tallied?

11:33:41 20 A. Well, the pharmacist is notified when the form is not
11:33:44 21 completed and says, you must complete -- this information is
11:33:48 22 required information. This store must have missed that
11:33:55 23 information or chosen not to put it in there.

11:33:58 24 Q. And you've got a system that doesn't accept the refusal to
11:34:02 25 fill forms if there's, like, something left blank, even if it's

—Nelson (Cross by Lanier)—

11:34:06 1 totally irrelevant?

11:34:09 2 A. Well, it wouldn't be totally irrelevant if it's a required
11:34:12 3 field.

11:34:13 4 Q. Okay. Pharmacists are granted the ability to exercise
11:34:18 5 their professional judgment and choose to refuse -- choose to
11:34:23 6 refuse to fill any prescription if they feel -- and here's
11:34:27 7 where you just do that same mantra you do over and over and
11:34:30 8 over in reply to these; correct?

11:34:33 9 A. Again, I'll repeat my information before. I'm not the only
11:34:37 10 one that sends out that information.

11:34:38 11 Q. Right. This is where you selected that same mantra that
11:34:43 12 you cut and paste and put in all of these; correct?

11:34:46 13 A. I put it in this particular response, yes, sir.

11:34:56 14 Q. So we've got that in February of 2013. Then you've got
11:34:59 15 another situation that arises a month later in Georgia. This
11:35:03 16 is Plaintiffs' Exhibit 26822.

11:35:07 17 If we could pass that out, please, Ms. Fleming.

11:35:19 18 Do you have that document, sir?

11:35:21 19 A. You said 26822; is that correct?

11:35:23 20 Q. No. I'm sorry. It's 26882.

11:35:27 21 A. There you go.

11:35:28 22 Q. That's my mistake and that explains why Ms. Fleming's
11:35:31 23 wondering what I was drinking this morning.

11:35:42 24 A. I have found that, sir.

11:35:43 25 Q. Thank you. Let me make sure that the Walmart lawyers get

—Nelson (Cross by Lanier)—

11:35:45 1 it in court.

11:35:46 2 Okay. Now, this is one that starts on Page 2 there is
11:35:54 3 an e-mail from Melody Odom, March of 2013, about a doctor under
11:35:59 4 investigation.

11:36:01 5 Do you see that?

11:36:06 6 A. That's what the e-mail is titled.

11:36:08 7 Q. "Hello Marcey" -- or "Hey, Marcey" -- excuse me -- "thank
11:36:11 8 you for taking to the time talk with us about the refusal to
11:36:16 9 fill situation today. We will be more vigilant about the
11:36:21 10 situations in the future. Additionally, I recently heard about
11:36:30 11 Georgia starting up a PMP" --

11:36:31 12 That's a prescription monitoring program; right?

11:36:40 13 A. That is correct.

11:36:40 14 Q. -- "which will alleviate this situation greatly. Just
11:36:42 15 wanted to send you the information on the medical practice and
11:36:45 16 physician that's overprescribing multiple C-II's oxycodone
11:36:53 17 30 milligrams in particular. He's currently under
11:36:57 18 investigation. We'll make every effort to fill these scripts
11:37:01 19 now unless overdosage amounts are prescribed."

11:37:05 20 Do you see that?

11:37:11 21 A. That's what's written in that document.

11:37:13 22 Q. So after y'all spoke with her, she says we'll make every
11:37:17 23 effort to fill these prescriptions unless it's an overdose
11:37:23 24 amount; right?

11:37:23 25 A. Sir, I don't believe I've ever spoke to this individual

—Nelson (Cross by Lanier)—

11:37:25 1 directly.

11:37:25 2 Q. Well, no, you didn't. It looks like Marcey Cring did.

11:37:31 3 Do you know Marcey?

11:37:37 4 A. I quite honestly don't recall Marcey.

11:37:41 5 Q. Okay. Well, she e-mailed it to you -- and we'll get to
11:37:46 6 your reply here in a moment. But continue looking at this
11:37:46 7 e-mail that you got forwarded to you. The practice in question
11:37:49 8 is listed. The doctor who's currently indicted is listed. The
11:37:57 9 doctor who's under investigation is listed, and it says, "As my
11:38:05 10 understanding goes, the DEA has attempted to shut down the
11:38:06 11 practice, but since it's not owned by the physicians they hire
11:38:13 12 they are having difficulty. Also, they shut down a previous
11:38:16 13 location and the owners just opened up a new business somewhere
11:38:19 14 else in town. They don't accept medical insurance. If
11:38:24 15 patients are willing to pay a \$500 office fee, the physician
11:38:27 16 will write you anything you want. I've never been there
11:38:36 17 myself, but multiple patients have confirmed this for me."

11:38:40 18 Do you see that?

11:38:40 19 A. That is what the document states.

11:38:42 20 Q. And then it says "The Georgia DEA agent who advised me not
11:38:46 21 to fill and provide patients with his contact phone number if
11:38:51 22 they became aggressive is," and identifies that gentleman.

11:38:54 23 Do you see that?

11:38:57 24 A. That's what it says.

11:38:58 25 Q. So this is the -- these are the scripts that now we'll make

—Nelson (Cross by Lanier)—

11:39:06 1 every effort to fill.

11:39:08 2 Do you see that, sir?

11:39:09 3 A. I see where it says they'll fill them only if they're not
11:39:13 4 considered overdoses.

11:39:15 5 Q. Well, Marcey sends this to you and says, "Brad, I've asked
11:39:21 6 my manager in Augusta, Georgia to send me this information so I
11:39:26 7 could pass it on. As I talked to the pharmacists at that
11:39:28 8 location, they advised me the local DEA agent specifically
11:39:31 9 asked them not to fill prescriptions from a particular
11:39:35 10 prescriber, and both the agent and provider information is
11:39:40 11 below. For now, I advised them we cannot honor that request,
11:39:45 12 blanket refusals. But I would share this with you for review
11:39:49 13 in case we wanted or needed to make an exception."

11:39:57 14 Do you see that?

11:39:59 15 A. That's what Marcey wrote.

11:40:03 16 Q. So with the idea that maybe if you wanted or needed to, an
11:40:08 17 exception to Walmart's policy could be made; right?

11:40:15 18 A. That was Marcey's opinion.

11:40:16 19 Q. And then you wrote her back, and you said, "You are wise
11:40:25 20 beyond your years. You are 100 percent correct in stating
11:40:30 21 we're not offered the ability to blanket refuse prescriptions
11:40:33 22 from a practice or a prescriber. If this prescriber is such a
11:40:39 23 danger to the public safety, then the DEA or medical board
11:40:44 24 pleads to suspend his registration or his license."

11:40:46 25 Do you see that?

—Nelson (Cross by Lanier)—

11:40:47 1 A. That's what the document states.

11:40:49 2 Q. And then you -- you can even tell it's a different type, a
11:40:53 3 different font, if you will. You cut and paste and insert in
11:41:03 4 that same language you do frequently, "I would encourage you to
11:41:07 5 review these. You're granted the ability to exercise your
11:41:10 6 professional judgment," on and on and on, "no blanket refusals
11:41:15 7 are allowed by boards of pharmacies," on and on and on.

11:41:18 8 Do you see that?

11:41:21 9 A. I see that, but again, I'll remind you that I'm not the
11:41:23 10 only one who sends that out.

11:41:25 11 Q. Right. That's Walmart policy; right?

11:41:29 12 A. That is the guidance that was being given at the time.

11:41:36 13 Q. Now, let's go north. Plaintiffs' Exhibit 26874. If you
11:41:44 14 would pull that out, please.

11:41:48 15 A. I apologize, I missed that number. What was it again?

11:41:53 16 Q. Sir, it is 26874.

11:42:11 17 Do you have that in front of you, sir?

11:42:14 18 A. Yes, sir.

11:42:16 19 Q. And what I'd like to do on this one is start on the very
11:42:22 20 last page, it's Page 5, an e-mail from Michael Schultz to
11:42:31 21 William Mobley, April 10th, 2013.

11:42:36 22 Do you see that?

11:42:42 23 A. I see that.

11:42:42 24 Q. I'm sorry, sir, what did you say? You see that?

11:42:46 25 A. I do see that.

—Nelson (Cross by Lanier)—

11:42:47 1 Q. Okay. Thank you.

11:42:53 2 It says, "Will, do we have a contact at the state of
11:42:55 3 Michigan? I'm a local doctor that's been investigated by the
11:42:58 4 state. According to a competitor, his license is not valid.
11:43:01 5 The problem is that the license verification information at the
11:43:05 6 state states his license status is disciplinary limited. I
11:43:14 7 can't get confirmation as to what that specifically means. The
11:43:20 8 e-mail -- or the state requires we request that information
11:43:21 9 through the Freedom of Information Act available through a
11:43:24 10 request via e-mail. My Walmart e-mail doesn't allow me to
11:43:28 11 e-mail the state for clarification. Also, I'm having trouble
11:43:33 12 gaining access to Relay Health. Any ideas where to start so
11:43:41 13 we're legally correct in our response?"

11:43:45 14 Do you see that?

11:43:45 15 A. That's what that document says.

11:43:48 16 Q. And this makes it up the chain to you when William Mobley
11:43:51 17 on Page 2 sends it to you and says, "Brad, is the below string
11:43:56 18 something you can help with? We've been notified by a
11:44:01 19 pharmacists at Walgreens in the area that a doctor has an issue
11:44:04 20 with his license and we shouldn't fill scripts. We're having
11:44:08 21 difficulty verifying and getting enough information to ensure
11:44:12 22 we're correct in declining scripts. Thank you for your help."

11:44:17 23 You write back, front page.

11:44:20 24 Do you see it? Do you see it, sir?

11:44:26 25 A. Yes, sir. Yes, sir, I see that.

—Nelson (Cross by Lanier)—

11:44:28 1 Q. You said, at this point, this prescriber still has all the
11:44:33 2 necessary credential to practice medicine. And then you give
11:44:36 3 that same cut and paste section that you and others give;
11:44:42 4 correct?

11:44:45 5 A. Yes, sir.

11:44:46 6 Q. And you've got the screenshot from the DEA that indicates
11:44:52 7 this fellow's still got a license for DEA purposes; correct?

11:44:58 8 A. Yes, sir.

11:45:07 9 Q. Now, sir, the refusal to fill process was something that in
11:45:11 10 a sense you owned at Walmart; didn't you?

11:45:19 11 MR. MAJORAS: Objection, form.

11:45:20 12 THE COURT: Sustained.

11:45:21 13 BY MR. LANIER:

11:45:21 14 Q. Okay. Sir, pull Plaintiffs' Exhibit 14223.

11:45:29 15 And, Ms. Fleming, if you'd pass that out.

11:45:40 16 Do you have that in front of you, sir?

11:45:44 17 A. Whoops, I think I pulled 14223A. Hold on.

11:45:50 18 Q. It should look like an e-mail on the cover, but then it's
11:45:55 19 got a PowerPoint attached, or at least some slides maybe from a
11:46:00 20 PowerPoint.

11:46:06 21 A. I have that now. Thank you.

11:46:07 22 Q. Okay. This is 2013, and it's a focus area deck maybe on
11:46:21 23 the suspicious order monitoring program. It's SOMP.

11:46:24 24 Do you see that?

11:46:30 25 A. I see what it says, yes, sir.

—Nelson (Cross by Lanier)—

11:46:31 1 Q. What I'd like you to do is go to Page 4 of that document in
11:46:38 2 the lower right-hand corner, and it's got a section where it
11:46:42 3 talks about refusal to fill and it references you.

11:46:46 4 Do you see that?

11:46:53 5 A. I see this particular slide deck, sir, but I don't know
11:46:56 6 where it came from.

11:46:58 7 Q. Well, my question to you is simple. Were you aware of the
11:47:03 8 fact that Walmart internally on refusal to fill, set out to
11:47:10 9 establish a process for the analysis of refusal to fill data
11:47:15 10 and reporting problematic prescribers or patients internally
11:47:20 11 and the owner is Brad Nelson.

11:47:24 12 Do you see that, sir?

11:47:27 13 A. That is what the document says.

11:47:29 14 Q. Okay. So when I was saying you were the owner of this, I
11:47:33 15 was taking the language from Walmart's document.

11:47:36 16 Do you see that?

11:47:38 17 A. I -- somebody created this slide deck. I don't see Walmart
11:47:42 18 on it anywhere.

11:47:46 19 Q. Well, if you look on the very front page, sent by Kristy
11:47:56 20 Spruell, JD, senior manager, strategy, compliance, safety, and
11:48:05 21 asset protection logistics, Walmart Stores, Bentonville,
11:48:11 22 Arkansas.

11:48:12 23 Do you see that?

11:48:13 24 A. I see who sent the e-mail, yes, sir.

11:48:15 25 Q. Okay. So did anybody at Walmart ever tell you that they

—Nelson (Cross by Lanier)—

11:48:18 1 looked to you to own the establishing a process for the
11:48:23 2 analysis of refusal to fill data and reporting problematic
11:48:28 3 prescribers or patients internally?

11:48:31 4 Anybody ever tell you that?

11:48:34 5 A. I don't recall that, sir.

11:48:36 6 Q. Now, if we continue forward into 2015, there's a document,
11:48:44 7 if you would pull it, 14450. 14450.

11:49:02 8 Do you have that one yet, sir?

11:49:07 9 A. Just about. I apologize. I pulled one too many forms.

11:49:12 10 Q. Sir, you're doing a great job. Don't worry about it --

11:49:16 11 A. (Unintelligible).

11:49:16 12 Q. Yeah, it's not easy to go through that box and find these.

11:49:19 13 Plaintiffs' 14450 is an e-mail that's from
11:49:28 14 Miranda Johnson to a number of people, including you, and it's
11:49:30 15 dated July 17, 2015.

11:49:33 16 Do you see that?

11:49:42 17 Do you see that e-mail?

11:49:43 18 A. Yes.

11:49:45 19 Q. And as of July 17, 2015, it says -- excuse me -- the
11:49:57 20 updates to pharmacy operation manual 1311 that we discussed a
11:50:02 21 few months ago are now posted. Just as a reminder, the
11:50:09 22 pharmacy operation manual no longer prohibits blanket refusals.

11:50:16 23 Did I read that right?

11:50:20 24 A. That is what that document says.

11:50:24 25 Q. Do you have any reason to think that document's wrong?

—Nelson (Cross by Lanier)—

11:50:39 1 A. That's what it says.

11:50:40 2 Q. So we have a document saying, "As of July 17th, 2015, the
11:50:45 3 pharmacy operation manual for Walmart no longer prohibits
11:50:48 4 blanket refusals"; right?

11:51:01 5 A. That's what the document says, yes, sir.

11:51:03 6 Q. Then you hit a reply. Look at your reply. "Just FYI" --
11:51:12 7 that's for your information; right?

11:51:14 8 A. Yes, sir.

11:51:14 9 Q. -- "pharmacy operation manual 1311 on the wire is still
11:51:19 10 from March of 2011."

11:51:22 11 That would have been over 4 years earlier; right?

11:51:30 12 A. That's what the document says.

11:51:31 13 Q. "It does not show updated on our wire yet. Sorry to say.
11:51:35 14 We are still looking for POM 813 as well, and it's not there.
11:51:41 15 All this was supposed to go live today for refusal to fill and
11:51:46 16 CSIR."

11:51:48 17 Do you see that?

11:51:50 18 A. I do.

11:51:51 19 Q. What is CSIR?

11:51:59 20 A. I don't honestly recall.

11:52:10 21 Q. And then you conclude by saying, "I'll walk over to ops and
11:52:12 22 find out what's up."

11:52:14 23 Do you remember going over to ops and finding out
11:52:16 24 what's up?

11:52:17 25 A. Well, that's what the document states.

—Nelson (Cross by Lanier)—

11:52:18 1 Q. Do you remember what was up, why it was slow posting?

11:52:22 2 A. I honestly do not recall, sir.

11:52:25 3 Q. All right. So we've got July 17th, 2015, the pharmacy
11:52:30 4 operation manual no longer prohibits blanket refusals. Fair?

11:52:36 5 A. That's what this e-mail states, but until it gets posted
11:52:39 6 and put out there on the wire, the communication to the stores
11:52:43 7 would still stand, and I clearly indicated on this document
11:52:46 8 that the one from March 2011 was still in place.

11:52:51 9 Q. Yeah, because if we go to Plaintiffs' Exhibit 14540,
11:53:14 10 please. . .

11:53:25 11 Do you have that, sir?

11:53:28 12 A. Yes, sir.

11:53:29 13 Q. Okay. This is one where Micah Charles has sent an e-mail
11:53:38 14 out on refusal to fill, and this is November 11th. So we're
11:53:44 15 five months after that e-mail about the POM no longer prohibits
11:53:50 16 blanket refusals; right?

11:53:59 17 A. It is after that date.

11:53:59 18 Q. "Mickey, going forward we are denying all Dr. Ure
11:54:07 19 prescriptions. Here's what I submitted on Archer."

11:54:09 20 Archer was your computer program that you had that
11:54:13 21 handled prescriptions; right?

11:54:14 22 A. Archer was a software program that Walmart used to capture
11:54:20 23 incident recorded -- incidents that were recorded.

11:54:22 24 Q. Yes.

11:54:22 25 A. It did not fill prescriptions.

—Nelson (Cross by Lanier)—

11:54:24 1 Q. Right, but incident reports pertaining to prescriptions;
11:54:27 2 right?

11:54:30 3 A. That was one of the things in there, yes.

11:54:31 4 Q. All right. "Pharmacists, each time we're given a
11:54:35 5 prescription from Dr. Ure, we are to deny them due to an
11:54:40 6 inappropriate prescriber/patient relation and fill out an
11:54:43 7 Archer report."

11:54:47 8 And then in bold print it says, "No prescriptions are
11:54:50 9 to be filled from Dr. John Ure going forward."

11:54:55 10 Do you see that?

11:55:03 11 A. That's what the pharmacist wrote.

11:55:03 12 Q. And then there's an explanation down below about
11:55:06 13 experiencing suspicious activity with Dr. Ure. "Similar
11:55:11 14 trouble a year or two ago, but then the patients quit coming
11:55:12 15 until recently. He's prescribing numerous C-II prescriptions
11:55:19 16 for patients that we don't believe have a medical need for
11:55:22 17 them. Since September 24th, we've filled seven C-II
11:55:28 18 prescriptions from Dr. Ure. Prescriptions contained anywhere
11:55:29 19 from one to six prescriptions on each hard copy. Each
11:55:33 20 prescription has all required information on it to make it a
11:55:37 21 legal fill, however, red flags are everywhere. Dr. Ure
11:55:44 22 frequently calls ahead to see what C-IIs we have in stock,
11:55:48 23 always late in the evening. He then writes a prescription and
11:55:51 24 the patient brings it in."

11:55:53 25 Do you see that?

—Nelson (Cross by Lanier)—

11:55:55 1 A. That's what it -- that's what the pharmacist wrote.

11:55:58 2 Q. "From the past history" -- or "From past history it's
11:56:02 3 usually a new patient to us, or patients that we know have been
11:56:04 4 fired from other doctors or have a history of abuse. Most
11:56:10 5 either have some sort of Medicaid or pay cash."

11:56:14 6 Do you see that?

11:56:17 7 A. That's what it says.

11:56:18 8 Q. "He often places, quote/unquote, stolen narcotic
11:56:23 9 prescriptions for patients that we have no history of seeing
11:56:25 10 and he calls ahead to verify he's doing so and documents this
11:56:29 11 on the hard copy. Three of these seven prescriptions note
11:56:33 12 they're one-time replacement due to theft. Six of the seven
11:56:39 13 prescriptions are for patients brand new to us who don't live
11:56:42 14 in this town. The seventh is for a local patient with a known
11:56:46 15 history of abuse who was recently fired from her previous
11:56:50 16 provider."

11:56:52 17 Do you see that?

11:56:56 18 A. That's what the document says.

11:56:58 19 Q. And it goes on and on and on ending with "We're going to
11:57:01 20 deny all Dr. Ure prescriptions going forward and we'll fill out
11:57:05 21 a web form each time. You've got the pharmacy manager signing
11:57:10 22 this."

11:57:10 23 Do you see that?

11:57:14 24 A. I do see that.

11:57:15 25 Q. Now, you wrote a reply e-mail, didn't you? Page 1.

—Nelson (Cross by Lanier)—

11:57:26 1 Do you see your reply?

11:57:28 2 A. I see the e-mail from myself to Mickey Boles.

11:57:31 3 Q. Your reply e-mail says, "Mickey, please share the best
11:57:39 4 practices regarding refusal to fill prescriptions. The
11:57:46 5 communication from Micah indicates they are blank refusing to
11:57:49 6 fill prescriptions for a specific prescriber. Understand that
11:57:53 7 this is not a best practice and boards of pharmacy grant
11:57:57 8 professional judgment for individual prescriptions and not for
11:58:00 9 prescribers. The pharmacists may wish to file a complaint with
11:58:04 10 the state medical board to request an official inquiry into the
11:58:10 11 prescriber's prescription writing. Prescriptions must be
11:58:12 12 evaluated on an individual basis and red flags identified.
11:58:16 13 Then the pharmacist can refuse to fill a prescription and
11:58:19 14 report a refusal to fill report in Archer. This location has
11:58:25 15 reported four refusals to fill in 2015 and only one from
11:58:31 16 Dr. Ure. This location has not displayed a pattern of an issue
11:58:35 17 with Dr. Ure. Reporting just one refusal does not equate to
11:58:43 18 wanting to refuse all prescriptions from this prescriber."

11:58:47 19 Do you see that?

11:58:50 20 A. That's what the document says.

11:58:52 21 Q. That's what you said. That's you writing, isn't it?

11:58:57 22 A. That is my e-mail.

11:59:03 23 Q. And then you send out your cut and paste section.

11:59:07 24 Do you see that?

11:59:12 25 A. Yes, sir.

—Nelson (Cross by Lanier)—

11:59:13 1 Q. And in your cut and paste section you e-mail, "No blanket
11:59:17 2 refusals are allowed by the boards of pharmacy." You're still
11:59:22 3 saying that, aren't you?

11:59:22 4 A. Yes, sir.

11:59:23 5 Q. And, yet, this is five months after the POM no longer
11:59:28 6 prohibits blanket refusals; right?

11:59:35 7 A. As I recall, the information was taken out of the POM, but
11:59:40 8 there was no information that said you could blanket refuse.

11:59:42 9 Q. No, sir. My point is you've got a horrendous situation.
11:59:45 10 You've got pharmacists that want to do a blanket refusal to
11:59:48 11 fill, you tell them they cannot, that no blanket refusals to
11:59:53 12 fill are allowed even though as of July 17th Walmart changed
11:59:58 13 their policy, didn't they?

12:00:04 14 A. Walmart removed the information about blanket refusal from
12:00:08 15 the POM, but I don't recall their being information that told
12:00:11 16 them they could blanket refuse.

12:00:13 17 Q. Plaintiffs' Exhibit --

12:00:14 18 MR. LANIER: Oh, Your Honor, it is noon. I don't know
12:00:15 19 how you want to do this.

12:00:17 20 THE COURT: I -- if this is a convenient place to
12:00:20 21 stop, we will take our lunch break.

12:00:23 22 MR. LANIER: Okay. Thank you, Judge.

12:00:25 23 THE COURT: So, Mr. Nelson, we're going to break for
12:00:28 24 lunch and pick up with your testimony promptly at 1 o'clock,
12:00:30 25 sir.

—Nelson (Cross by Lanier)—

12:00:31 1 So, ladies and gentlemen --

12:00:32 2 MR. LANIER: This is 1 o'clock eastern time, so that's
12:00:34 3 noon your time.

12:00:35 4 THE COURT: Would be one hour from now.

12:00:37 5 All right, ladies and gentlemen, we'll recess for
12:00:40 6 lunch. Usually admonitions and then we'll pick up at 1 o'clock
12:00:43 7 with Mr. Nelson.

12:00:45 8 (Jury excused from courtroom)

12:04:43 9 (Recess was taken at 12:00 p.m.)

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—Nelson (Cross by Lanier)—

1 A F T E R N O O N S E S S I O N

2 - - - - -

01:00:03 3 (In open court at 12:58 p.m.)

01:00:03 4 COURTROOM DEPUTY: All rise.

01:01:34 5 (Jury returned to courtroom at 1:01 p.m.)

01:01:52 6 THE COURT: Please be seated, ladies and gentlemen.

01:01:57 7 And, Mr. Lanier, you may continue. I want to make
01:02:00 8 sure we have our witness on.

01:02:04 9 MR. LANIER: Okay. There he is.

01:02:08 10 THE COURT: All right. And, Mr. Nelson, I just want
01:02:11 11 to make sure you understand you're still under oath from this
01:02:13 12 morning.

01:02:14 13 THE WITNESS: I understand.

01:02:15 14 THE COURT: Okay. Thank you.

01:02:16 15 All right. Mr. Lanier, you may continue.

01:02:17 16 MR. LANIER: Thank you, Your Honor. May it please
01:02:20 17 this Court.

01:02:21 18 BY MR. LANIER:

01:02:21 19 Q. Mr. Nelson, you can still see and hear me okay?

01:02:26 20 A. Yes, sir.

01:02:27 21 Q. Great. So we had talked about the July 17th, 2015, date as
01:02:34 22 the date when the pharmacy operation manual no longer
01:02:38 23 prohibited blanket refusals, and I had gotten us up to December
01:02:43 24 of that year with Plaintiffs' Exhibit 14552. If I can impose
01:02:51 25 on you to grab that and Ms. Fleming to pass that out.

—Nelson (Cross by Lanier)—

01:03:08 1 Could you have that in front of you, sir?

01:03:10 2 A. I do.

01:03:11 3 Q. And you can see that we are about December of 2015 on this
01:03:18 4 document; right?

01:03:20 5 A. December 4th.

01:03:21 6 Q. Yes, sir. And it concerns a Dr. Faizuddin Shareef.

01:03:26 7 Do you see that as well?

01:03:28 8 A. That is the subject of the e-mail.

01:03:29 9 Q. And the first e-mail is on the backside of this. It says,
01:03:39 10 "It's come to our attention that we're one of the few stores in
01:03:43 11 the area currently accepting any prescriptions for Dr. Shareef.
01:03:47 12 This includes CVS, Walgreens, as well as some other local
01:03:51 13 Walmarts. Dr. Shareef has several offices in the area that are
01:03:57 14 frequently staffed by individuals other than the doctor who
01:04:00 15 simply fill in the name of the patient and the date on
01:04:02 16 previously filled in prescriptions that contain the doctor's
01:04:05 17 signature. Most of these prescriptions are for 30 milligrams
01:04:11 18 of Adderall, some sort of antianxiety medication such as
01:04:17 19 Klonopin and also various pain medications, usually for a
01:04:21 20 15-day supply."

01:04:21 21 Do you see that?

01:04:23 22 A. That's what the document says.

01:04:24 23 Q. "When patients present the prescription, they'll frequently
01:04:28 24 tell us they've not seen the doctor, just have the prescription
01:04:33 25 filled in by the nurse. They'll also call ahead to see if

—Nelson (Cross by Lanier)—

01:04:36 1 we'll fill their prescription. They tell us the doctor's aware
01:04:41 2 that several stores will not take his prescriptions and advises
01:04:45 3 the patients to phone ahead. They also tell us this is usually
01:04:48 4 a cash-based business.

01:04:52 5 "We do call the office and verify prescriptions when
01:04:58 6 the writing doesn't match. We also check/inspect on each of
01:05:01 7 these patients. We'd like to get some guidance on how to
01:05:07 8 handle these prescription going forward."

01:05:08 9 Do you see that?

01:05:09 10 A. That's what the document says.

01:05:11 11 Q. And then you wrote back and said, "I would provide them
01:05:18 12 with these best practices," and you cut and paste your usual
01:05:27 13 language.

01:05:28 14 Do you see that?

01:05:29 15 A. I do.

01:05:29 16 Q. And that included your insertion of the Walmart policy, "No
01:05:33 17 blanket refusals are allowed by boards of pharmacy."

01:05:35 18 Do you see that?

01:05:36 19 A. I do.

01:05:38 20 Q. "Even though, of course, we are five months after the
01:05:42 21 pharmacy operations manual no longer prohibits such blanket
01:05:47 22 refusals." True?

01:05:49 23 A. According to that first e-mail in July, that's what it
01:05:52 24 states, sir. Again, I want to repeat that I'm not the only one
01:05:55 25 sending that information out.

—Nelson (Cross by Lanier)—

01:05:56 1 Q. I understand that.

01:05:59 2 Plaintiffs' Exhibit 14662, if you would pull that out,
01:06:03 3 please, 14662.

01:06:19 4 Do you have it?

01:06:20 5 A. I do.

01:06:24 6 Q. I don't have the very bottom e-mail -- strike that. I said
01:06:36 7 I don't have the very -- I have the very bottom e-mail, and
01:06:39 8 it's from a Thelma Mendez to John Marakas, and we are all way
01:06:46 9 into February of 2016.

01:06:49 10 Do you see that, sir?

01:06:54 11 A. That is the date of this e-mail, yes.

01:06:56 12 Q. "Hello. Greetings. A patient asked me about another
01:06:59 13 Walmart pharmacy telling them they will not be able to dispense
01:07:04 14 anymore their control medicines, Percocet."

01:07:07 15 That's a Schedule II opioid; right?

01:07:16 16 A. Correct.

01:07:16 17 Q. Soma. You know what Soma is, don't you?

01:07:20 18 A. Yes, sir.

01:07:20 19 Q. And Valium. This is the trinity cocktail, isn't it?

01:07:24 20 A. It's definitely a cocktail.

01:07:29 21 Q. So telling them they won't be able to dispense anymore
01:07:34 22 because it's considered a cocktail. "Is this entirely on
01:07:37 23 pharmacist's judgment, or is there any legality involved here?
01:07:41 24 Please clarify. Me, thank you again."

01:07:43 25 You see that?

—Nelson (Cross by Lanier)—

01:07:49 1 Do you see that, sir?

01:07:49 2 A. Yes, sir.

01:07:49 3 Q. Then it gets forwarded to you with the question, "Brad,
01:07:53 4 thoughts?" Right?

01:07:58 5 Right?

01:07:58 6 A. Correct.

01:07:58 7 Q. Then you reply -- sorry. You reply, "A cocktail is a red
01:08:04 8 flag that should alert the registered pharmacist to use their
01:08:09 9 professional judgment to refuse to fill the prescription.
01:08:12 10 There are some states that have made writing the cocktails
01:08:15 11 illegal for the prescriber, but there are no legal restrictions
01:08:18 12 for the pharmacist."

01:08:20 13 Do you see that?

01:08:24 14 A. That is what the document says.

01:08:24 15 Q. That's what you said; right? You wrote that.

01:08:27 16 A. That's what's in the e-mail, yes, sir.

01:08:30 17 Q. So the Walmart policy that you're vocalizing here is it may
01:08:37 18 be illegal to write the prescription, but that doesn't mean
01:08:41 19 it's illegal to fill the prescription; right?

01:08:42 20 A. That is not what it says.

01:08:43 21 Q. It says, "There are some states that have made writing the
01:08:48 22 cocktails illegal for the prescriber."

01:08:54 23 Do you see that?

01:08:55 24 A. That's correct.

01:08:55 25 Q. "But there are no legal restrictions for the pharmacist";

—Nelson (Cross by Lanier)—

01:09:00 1 right?

01:09:01 2 A. That was my understanding, sir.

01:09:03 3 Q. So the prescriber writes it -- writes the prescription;
01:09:08 4 right?

01:09:14 5 A. Yes, sir.

01:09:18 6 Q. The pharmacist fills the prescription; correct?

01:09:23 7 A. That is a possibility if they don't decide not to.

01:09:27 8 Q. Some states have made writing it illegal, but no legal
01:09:32 9 restrictions on filling it; right?

01:09:39 10 A. At that time I'm not aware of any states that had that
01:09:42 11 requirement.

01:09:43 12 Q. All right. As we continue through 2016, we're now at June,
01:09:48 13 and that puts us a full year, or the 12th month past July 17th.

01:09:57 14 Do you see that? Plaintiffs' Exhibit 26732 is the
01:10:04 15 document, sir.

01:10:05 16 A. Okay.

01:10:34 17 Q. So you've got Plaintiffs' Exhibit 26732. We are one year
01:10:39 18 after this e-mail talking about the pharmacy operation manual;
01:10:45 19 correct?

01:10:49 20 A. Yes, sir. Again, I'm not sure exactly when it got posted,
01:10:54 21 sir. We discussed that earlier.

01:10:55 22 Q. I understand. Talking about the e-mail saying that the POM
01:10:58 23 no longer prohibits blanket refusals; correct?

01:11:04 24 A. Okay.

01:11:05 25 Q. All right. So here from Deborah Jenkins is an e-mail that

—Nelson (Cross by Lanier)—

01:11:11 1 says, "We've come across the following in the last few months,
01:11:17 2 Dr. Philip Berent, child and adolescent psychiatry, cash pay
01:11:22 3 only, rights for Xanax, oxycodone, Adderall, Oxycontin.
01:11:34 4 Patients, cash pay then prescription insurance."

01:11:42 5 Do you see that?

01:11:48 6 A. I do.

01:11:49 7 Q. Now, this says, "Gives patient cell phone numbers and
01:11:53 8 prefers texting for its most rapid response. Available by
01:12:01 9 e-mail and does telepsychiatry via Skype."

01:12:05 10 Do you see that?

01:12:10 11 A. That is what the document says.

01:12:12 12 Q. Now, this is a child and adolescent psychiatrist, child, we
01:12:17 13 know what is, adolescent is up to the page of 18, isn't it?

01:12:23 14 A. I believe that's correct.

01:12:30 15 Q. And he's writing Xanax, oxycodone, Oxycontin.

01:12:34 16 Do you see that?

01:12:35 17 A. That's what the e-mail says.

01:12:36 18 Q. And he's doing it via Skype. Do you see that as well?

01:12:44 19 A. That's what this e-mail says.

01:12:46 20 Q. He goes on to say -- he being the doctor -- he's "chosen to
01:12:50 21 be an out of network doctor. Does not accept insurance.
01:12:55 22 Having a cash-based practice gives him the flexibility and
01:12:58 23 freedom to tailor a treatment plan that best serves each of his
01:13:04 24 patients."

01:13:04 25 Do you see that?

—Nelson (Cross by Lanier)—

01:13:06 1 A. That's what the e-mail says.

01:13:08 2 Q. And then you get this e-mail, "Hi, Brad, most of my stores
01:13:15 3 have brought to my attention the prescribing habits of the
01:13:19 4 below physician. It's not just one store, but most of them in
01:13:22 5 my market. We're filling out the refusal to fill forms and not
01:13:28 6 issuing any blanket refusals. I just wanted to reach out to
01:13:32 7 you to see if there's anything else we should be doing or you
01:13:35 8 need any more information with all the discussion around the
01:13:39 9 DEA and prescribing dispensing of controlled substances. Our
01:13:43 10 pharmacists are on edge about him and his patients."

01:13:47 11 Do you see that?

01:13:50 12 A. That's what it says, yes, sir.

01:13:51 13 Q. Now, you e-mail back and you say the same thing you put
01:13:59 14 into all of them with no blanket refusals are allowed; correct?

01:14:05 15 A. That is what this document says, sir.

01:14:07 16 Q. Yeah, that's the e-mail you sent; right?

01:14:10 17 A. That is correct.

01:14:11 18 Q. Okay. And so we understand the significance of this, you
01:14:19 19 might have one Walmart store over here (indicating), you might
01:14:31 20 have another Walmart store over there (indicating), and if one
01:14:39 21 of the registered pharmacists at this store (indicating) here's
01:14:46 22 something -- that's an ear. Here.

01:14:54 23 This pharmacist hears something bad. If you have a
01:15:03 24 blanket refusal to fill, then it's in the computer system, and
01:15:12 25 it doesn't matter which Walmart the patient walks into, either

—Nelson (Cross by Lanier)—

01:15:15 1 one, a blanket is going to cover it, isn't it?

01:15:22 2 A. Sir, I don't -- I don't know how a blanket -- or excuse
01:15:27 3 me -- a blanket refusal would have worked at Walmart because
01:15:31 4 there wasn't one there, so I don't know how it would have
01:15:33 5 worked.

01:15:34 6 Q. No. I'm saying if there was a blanket refusal to fill, it
01:15:37 7 would work in every Walmart; right?

01:15:38 8 A. Sir, I don't know. Like I said, I do not know how the
01:15:41 9 process would have worked. I don't know if it was going to be
01:15:44 10 blocked in the computer system. That's what you asked me.

01:15:46 11 Q. Okay.

01:15:47 12 A. I don't know that.

01:15:48 13 Q. Well, you had a computer system, didn't you?

01:15:50 14 A. Walmart did.

01:15:52 15 Q. Yeah. The Archer system that you had input to; right?

01:15:58 16 A. No, sir, that is not correct. We did not use Archer to
01:16:01 17 fill prescriptions.

01:16:02 18 Q. Not to fill prescriptions, but didn't you have a computer
01:16:04 19 system that would pull up alerts?

01:16:11 20 A. I'm not sure I understand the question.

01:16:12 21 Q. Okay. It's simple. I'm not doing a good job asking it
01:16:15 22 then. If someone, in 2016, came into a Walmart with a
01:16:21 23 prescription, was that Walmart pharmacist given the tool of a
01:16:27 24 computer with a program so that they could enter that
01:16:30 25 prescription information into the program and pull up

—Nelson (Cross by Lanier)—

01:16:34 1 information about it?

01:16:39 2 A. If you're talking about the prescription monitoring
01:16:42 3 program, which is, I think, what you're asking me about, that
01:16:45 4 is done outside the prescription filling system.

01:16:49 5 Q. No, sir, I'm talking about --

01:16:52 6 A. -- the internet-based system.

01:16:53 7 Q. The jury heard a lot about Walgreens has a refusal to fill
01:16:59 8 form and information that comes up on their computer screens
01:17:04 9 that Walgreens does or did.

01:17:07 10 Did Walmart have any type of a program that brought up
01:17:12 11 information so that you could tell, for example, if the
01:17:17 12 prescription had already been rejected?

01:17:23 13 A. Not that I'm aware of.

01:17:25 14 Q. Wow. So this person could go into one Walmart store and
01:17:31 15 have their prescription rejected and then just go to another
01:17:35 16 Walmart store with the same prescription and get it filled.

01:17:44 17 A. Like I said, I'm not aware of any system that you could put
01:17:47 18 information in about a prescription that you rejected.

01:17:52 19 Q. Okay. So let's look at another situation. We're over a
01:18:10 20 year after this July 17th date. It's Plaintiffs' Exhibit
01:18:16 21 26736. If you'd pull that, please.

01:18:39 22 Are you able to find it okay?

01:18:40 23 A. Yes, sir.

01:18:42 24 Q. All right. If you'll start on the second page, bottom
01:18:49 25 e-mail, "Hello Michael."

—Nelson (Cross by Lanier)—

01:18:53 1 Do you see where I'm reading?

01:18:54 2 A. Yes, sir.

01:18:56 3 Q. "Mekeda" -- who by the way I'm assuming is this person
01:19:00 4 that's copied on this e-mail. See? "Mekeda overheard several
01:19:09 5 of Dr. Garfield Samuel's patients complaining outside our
01:19:14 6 pharmacy that he doesn't examine them prior to writing
01:19:22 7 controlled substance Schedule II prescriptions."

01:19:23 8 Do you see that?

01:19:27 9 A. That's what it says.

01:19:28 10 Q. And C-II prescriptions, at this point in time, includes oxy
01:19:33 11 and hydro, among other opiates; right?

01:19:39 12 A. And non-opiates, yes, sir.

01:19:42 13 Q. "This is in addition to the other red flags the prescriber
01:19:46 14 already exhibits, such as his patients coming into the store in
01:19:51 15 clumps on certain days, and with similar prescriptions."

01:19:58 16 Are you reading with me?

01:20:00 17 A. That's what it says, sir.

01:20:02 18 Q. "Previously we had been calling the office and collecting
01:20:06 19 information to verify proper patient prescriber relationship,
01:20:13 20 but now we're concerned this information may be fabricated. We
01:20:17 21 had also been consistently checking the patients' PMPs,"
01:20:22 22 prescription monitoring program.

01:20:23 23 Do you see that?

01:20:25 24 A. Yes, sir.

01:20:27 25 Q. "We're no longer comfortable filling controlled medications

—Nelson (Cross by Lanier)—

01:20:31 1 from his office.

01:20:33 2 "Is there a proper way to go about letting our
01:20:37 3 patients know we'll no longer be filling his prescriptions, and
01:20:41 4 how do we handle our long-standing patients? Any guidance is
01:20:46 5 appreciated."

01:20:46 6 Do you see that?

01:20:47 7 A. Yes, sir.

01:20:47 8 Q. And this makes its way to you, and you send a reply, don't
01:20:52 9 you?

01:20:53 10 A. Yes, sir.

01:20:54 11 Q. And in your reply, over a year past the change in policy at
01:20:59 12 Walmart, you said, "Here are best practices for refusing to
01:21:06 13 fill prescriptions. Each prescription must be evaluated
01:21:08 14 individually. Boards of pharmacy do not give the pharmacist
01:21:11 15 the authority to blanket refuse all prescriptions from a
01:21:15 16 prescriber."

01:21:17 17 And then you put in that same cut and paste you put
01:21:19 18 into every e-mail?

01:21:20 19 Do you see that?

01:21:22 20 A. I do.

01:21:30 21 Q. Now, at some point there was a concern about the system
01:21:37 22 y'all had, wasn't there, internally?

01:21:43 23 A. I don't understand the question, the system.

01:21:47 24 Q. Okay. Let me do it this way. I'm going to have -- if
01:21:51 25 you'll pull Plaintiffs' Exhibit 26737.

—Nelson (Cross by Lanier)—

01:22:17 1 Do you have it, sir?

01:22:18 2 A. I do.

01:22:20 3 Q. Now, instead of starting just at the bottom, I'm going to
01:22:24 4 start with the most recent e-mail from you because it's
01:22:28 5 important to see what you said. You said, "See my response
01:22:32 6 below. Comments are in blue."

01:22:37 7 Do you see that?

01:22:38 8 A. That's what it says, yes, sir.

01:22:39 9 Q. Now, the copy that we were given doesn't have blue
01:22:45 10 comments, and so we're going to have to try to figure out what
01:22:47 11 are your comments, but I think we can do that pretty well at
01:22:53 12 least for some of them.

01:22:54 13 So now go to the e-mail where you would have inserted
01:22:57 14 your comments. It's from Kevin Matkaiti.

01:23:00 15 Do you see that?

01:23:06 16 A. I see the e-mail, yes.

01:23:07 17 Q. And this is October 4th, so we're well over a year after
01:23:12 18 the POM no longer prohibits blanket refusals.

01:23:16 19 Do you see that as well?

01:23:23 20 A. Yes, sir.

01:23:24 21 Q. All right. "Steve, I've had two interesting conversations
01:23:27 22 with prescribers in the last two days, and I wanted to get
01:23:32 23 your/corporate compliance take on this."

01:23:40 24 Now, you would be corporate compliance; right?

01:23:47 25 A. I was one of the people involved with compliance, but I

—Nelson (Cross by Lanier)—

01:23:51 1 certainly do not represent all of corporate compliance.

01:23:51 2 Q. Right. But that's -- that would be if you were talking
01:23:53 3 about this, you would have been talking about it in your role
01:23:57 4 as part of corporate compliance. True?

01:24:02 5 A. That was the pharmacist's opinion, yes.

01:24:05 6 Q. Dr. Number 1, Sharon Johnson. "I called her because I had
01:24:13 7 a patient dropping of a prescription for Percocet and
01:24:22 8 oxycodone."

01:24:22 9 Those are two prescriptions for to different opiates;
01:24:25 10 right?

01:24:30 11 A. Correct.

01:24:30 12 Q. "When I reviewed the prescription monitoring program, I see
01:24:36 13 he hasn't filled any narcotics in the last year other than one
01:24:41 14 prescription for what looks like Percocet the last month."

01:24:47 15 Right?

01:24:47 16 A. That's what it says.

01:24:48 17 Q. "I was curious to know why he's getting such high doses of
01:24:52 18 narcotics with zero history of use, so I went ahead and spoke
01:24:57 19 with the doctor. She said that he was getting high doses of
01:25:01 20 pain medicines from a Dr. Poluhkin, a doctor who has a history
01:25:08 21 of questionable prescribing as well, one and a half to two
01:25:14 22 years ago, which is why she's prescribing this."

01:25:17 23 Do you see that, sir?

01:25:21 24 A. That's what it says.

01:25:22 25 Q. "This is by no means an acceptable response to me and makes

—Nelson (Cross by Lanier)—

01:25:25 1 me question any prescription she may prescribe. If a patient's
01:25:29 2 opioid free for that long, she should not be jumping right back
01:25:32 3 in and prescribing high doses like this."

01:25:37 4 So you see that concern of Dr. 1?

01:25:45 5 A. I do see that written in the document.

01:25:46 6 Q. And then it's got Dr. 2, Mary Stahl.

01:25:52 7 Same situation as above. "Patient was given
01:25:56 8 prescription for oxycodone, 5 milligrams at 120 tablets, but
01:25:59 9 had no history of opioid use based on the prescription
01:26:04 10 monitoring program. "

01:26:07 11 Do you see that?

01:26:11 12 A. That's when it says.

01:26:12 13 Q. "I called and spoke to the doctor to establish pain
01:26:16 14 management background. She told me the patient doesn't have
01:26:18 15 any history but told her that she's been taking other people's
01:26:21 16 medication. Again, this is absolutely not a reason to
01:26:23 17 prescribe an opioid medication to a patient and it's careless
01:26:29 18 prescribing in my opinion."

01:26:35 19 Do you see that?

01:26:35 20 A. That is what it says.

01:26:36 21 Q. Now, it looks like it's still the pharmacist here saying,
01:26:39 22 "I never really liked the idea of blanket refusals on certain
01:26:43 23 doctors because they may actually have patients that need pain
01:26:46 24 medication. However, when I call and get answers like these,
01:26:52 25 it puts into question the doctor's competency. I'm not sure I

—Nelson (Cross by Lanier)—

01:26:56 1 feel comfortable filling any prescription written by a doctor
01:26:58 2 who thinks it's okay to prescribe this way. Pharmacists have
01:27:02 3 an obligation to ensure that controlled substances are being
01:27:05 4 used and prescribed appropriately. The country's prescription
01:27:09 5 drug abuse problem is well documented and it's prescribers like
01:27:13 6 these that are at the heart of the problem."

01:27:16 7 Do you see that?

01:27:19 8 A. That's that pharmacist's opinion, yes, sir.

01:27:21 9 Q. And then look what else was that Walmart pharmacist's
01:27:25 10 opinion. "We need to have a better system in place to protect
01:27:30 11 us as pharmacists and Walmart as a company from liability
01:27:36 12 associated with this type of prescribing. I don't think
01:27:40 13 pharmacist discretion is enough to protect us."

01:27:45 14 Do you see that?

01:27:47 15 A. Yes, the pharmacist wrote that, yes, sir.

01:27:53 16 Q. And then here are the questions for you in compliance. "Is
01:27:55 17 it okay to blanket refuse for a doctor who we have documented
01:27:58 18 evidence of competency and ethical concerns?"

01:28:02 19 Do you see that?

01:28:06 20 A. Yes, sir.

01:28:07 21 Q. Now, it's not in blue ink, but I'm going to suggest to you
01:28:12 22 that this inserted answer is yours, and you tell me if you
01:28:15 23 think I'm wrong. "At this time there's not an option to
01:28:19 24 blanket refuse any prescriber. Each prescription needs to be
01:28:22 25 evaluated on its own merits. I would agree this Kevin's

—Nelson (Cross by Lanier)—

01:28:26 1 decision to not fill these two prescriptions."

01:28:30 2 Do you see that?

01:28:35 3 A. I do see that.

01:28:36 4 Q. Question 2 -- doesn't that look like something you'd have
01:28:40 5 written?

01:28:40 6 A. I -- I honestly don't recall this particular e-mail. I see
01:28:45 7 it's from me, so I don't know where the blue responses start or
01:28:47 8 stop.

01:28:48 9 Q. Well, it continues with Question 2, "Can more be done to
01:28:54 10 protect us as pharmacists and Walmart as a company from
01:28:56 11 liability associated with prescriptions written by negligent
01:29:02 12 prescribers?"

01:29:03 13 And the reply says, "I'm not sure I understand what
01:29:05 14 liability Kevin is talking about; however, evaluating the red
01:29:10 15 flags associated with the prescription is the best way to
01:29:14 16 eliminate filling prescriptions not written for legitimate
01:29:15 17 medical purposes."

01:29:16 18 Do you see that?

01:29:18 19 A. I see that's on the (unintelligible) document, yes, sir.

01:29:21 20 Q. I'm sorry, sir. Thank you.

01:29:23 21 "Can I create my own standardized form to send to the
01:29:26 22 doctor to better protect myself and my staff from liability?

01:29:31 23 "I'd rather have a corporate form, but I'll make my
01:29:34 24 own if needed."

01:29:34 25 And then you've got that information that you seem to

—Nelson (Cross by Lanier)—

01:29:38 1 cut and paste so often that includes "O blanket refusals are
01:29:47 2 allowed by the boards of pharmacy."

01:29:49 3 Do you see that as well?

01:29:50 4 A. I don't see that whole thing put in there this time. I
01:29:53 5 just see, "Follow POM 1703 and 1311."

01:29:58 6 Q. Turn to the next page, sir.

01:30:01 7 A. Oh. Okay. I apologize.

01:30:03 8 Q. That's okay. That's -- that's your cut and paste section,
01:30:09 9 isn't it?

01:30:09 10 A. That is true.

01:30:14 11 Q. Now, as we roll into 2017 we're getting near the end of
01:30:23 12 your employment, aren't we?

01:30:27 13 A. That would be -- that's when I left Walmart, yes.

01:30:29 14 Q. You left Walmart when?

01:30:35 15 A. I don't recall the exact date, but I believe it was in
01:30:36 16 March of 2017.

01:30:38 17 Q. Yep. That seems to be consistent with me. I'm going to
01:30:41 18 show you Plaintiffs' Exhibit 8037, and I'll represent --

01:30:48 19 Well, why don't you pull it out and we'll get a copy
01:30:51 20 to counsel.

01:31:07 21 Do you have that in front of you?

01:31:09 22 A. Yes, sir.

01:31:09 23 Q. It's an e-mail you sent February 24th of 2017. You see?

01:31:22 24 A. Yes, sir.

01:31:28 25 Q. If you look at the back, it's talking about some bad

—Nelson (Cross by Lanier)—

01:31:31 1 doctors, or bad situation with a store tech, and question, "Can
01:31:39 2 we lobby for a home office blanket refusal for Justin Lamonda
01:31:45 3 so the refusal will show home office support?"

01:31:48 4 Do you see that? It's on Page 3?

01:31:55 5 A. I see it.

01:31:56 6 Q. All right. Then you said, in reply on Page 2, "That will
01:32:04 7 happen automatically if there are enough refusals to fill filed
01:32:09 8 for this prescriber, or multiple blanket refusals filed from
01:32:14 9 multiple locations."

01:32:17 10 So at this point y'all clearly can do a blanket
01:32:21 11 refusal, can't you?

01:32:29 12 A. The document states what it is. I was not involved in the
01:32:32 13 process of determining a blanket refusal, so I don't know all
01:32:35 14 the --

01:32:36 15 Q. Right. But that document saying that is from you?

01:32:40 16 A. That was my understanding of how the process would work.

01:32:43 17 Q. And then you get an e-mail back that says, "Brad, can you
01:32:49 18 look into where we are at refusals to fill for Dr. Lamonda at
01:32:54 19 Store 40. I'm wondering how close we are to getting a home
01:32:57 20 office blanket refusal."

01:33:04 21 So there's a home office blanket refusal to fill
01:33:07 22 available, isn't there?

01:33:12 23 A. I don't believe there's one for that doctor.

01:33:12 24 Q. Right, but the company has an ability to do one in spite of
01:33:16 25 what you may have written two months before; right -- three

—Nelson (Cross by Lanier)—

01:33:20 1 months before?

01:33:23 2 A. There was a process being implemented at that time which I
01:33:26 3 was not a part of.

01:33:27 4 Q. Wait. You said that was a process being implemented at
01:33:30 5 that time which I was not a part of?

01:33:33 6 A. Correct, in February of 2017.

01:33:36 7 Q. In fact, you say in the reply to that e-mail on the front,
01:33:42 8 "Josh, you can do that in Archer by putting his DEA number in
01:33:50 9 the search box and hitting enter. I will tell you it takes
01:33:55 10 hundreds of refusals to fill to be considered for a corporate
01:34:01 11 block. It's a huge deal and we only have a handful of DR's --
01:34:10 12 doctors -- that have been issued a corporate block"; correct?

01:34:17 13 A. That is my understanding of the process at the time.

01:34:30 14 Q. But if we go back to Plaintiffs' Exhibit 26736, for
01:34:35 15 example, this was the one you and I just covered, Dr. Sam --
01:34:43 16 Garfield Samuel, where one of the pharmacists overheard the
01:34:50 17 patients complaining outside the pharmacy, "He doesn't examine
01:34:54 18 them prior to writing the prescriptions. This is in addition
01:34:57 19 to other red flags the prescriber already exhibits, such as
01:35:02 20 patients coming in the store in clumps in days with similar
01:35:08 21 prescriptions," et cetera.

01:35:08 22 You see that?

01:35:14 23 A. That's what the document says.

01:35:15 24 Q. Now, there's no way for the Walmart down the street to know
01:35:24 25 the experiences of this Walmart pharmacist, is there?

—Nelson (Cross by Lanier)—

01:35:31 1 A. I don't know what you're asking.

01:35:34 2 Q. Well, Mekeda overheard the patients complaining outside the
01:35:38 3 pharmacy that the doctor doesn't examine them prior to writing.

01:35:42 4 Do you see that?

01:35:47 5 A. That's what she says in the e-mail.

01:35:49 6 Q. So let's say Mekeda says I'm not going to fill the
01:35:52 7 prescriptions for the patients because of that, and the
01:35:54 8 patients go down to another Walmart. Other Walmart hadn't
01:35:58 9 heard that conversation, have they?

01:36:02 10 A. I don't know if they heard it or didn't.

01:36:04 11 Q. Well, let's assume that the pharmacist for the other
01:36:08 12 Walmart 5 miles away wasn't also standing in the parking lot of
01:36:13 13 the first Walmart hearing the story. Okay.

01:36:21 14 Are you with me?

01:36:21 15 A. Well, but it's not unusual for pharmacists to contact other
01:36:23 16 pharmacists and tell them what their concerns are, especially
01:36:28 17 our Walmart pharmacy.

01:36:29 18 Q. Right. But if the pharmacist has got no reason for -- I
01:36:32 19 mean, what's the pharmacist going to do, say, hey, did you try to
01:36:34 20 fill this at another Walmart pharmacy, and if so, which one so
01:36:39 21 I can call the pharmacist and find out why it was refused?

01:36:44 22 MR. MAJORAS: Objection. Speculation. Hypothetical.

01:36:47 23 THE COURT: Overruled.

01:36:48 24 THE WITNESS: It's certainly not unusual for
01:36:51 25 pharmacists to contact other pharmacy to let them know, hey, I

—Nelson (Cross by Lanier)—

01:36:53 1 just refused to fill a prescription for so -- this particular
01:36:57 2 patient. Don't know if they'll try to bring it to you or not,
01:37:02 3 but here was my concerns. That was not unusual, and the
01:37:05 4 pharmacists grapevine, as I will call it, is pretty strong in
01:37:09 5 most communities.

01:37:10 6 Q. So if the pharmacist had time and just started dialing
01:37:12 7 every pharmacy within a radius of however many miles, that
01:37:17 8 might be the only way that the other Walmart pharmacists will
01:37:23 9 know about this. Is that what you're saying?

01:37:25 10 A. Well, sir, from many of the other e-mails that you've
01:37:28 11 provided to me during this deposition, it clearly states I
01:37:32 12 talked to a pharmacist at this store, I talked to somebody at
01:37:35 13 that store, and you saw the e-mail chains from multiple Walmart
01:37:38 14 pharmacists to each other, so I believe they were communicating
01:37:40 15 to each other if they had concerns about a prescription that
01:37:43 16 they rejected.

01:37:45 17 Q. Okay. Just -- okay. So they may have done it in one or
01:37:48 18 two or three or more occasions. Do you think they did it in
01:37:52 19 every one?

01:37:53 20 Let me ask it this way. Was it a Walmart policy when
01:37:57 21 a pharmacist refused to fill a prescription that the pharmacist
01:38:02 22 call every other pharmacist within some geographical range and
01:38:05 23 tell them?

01:38:08 24 Was that a policy?

01:38:09 25 A. I'm not aware of that being in any written policy.

—Nelson (Cross by Lanier)—

01:38:11 1 Q. Was it a suggestion that was in writing anywhere?

01:38:17 2 A. Not that I'm aware of.

01:38:21 3 Q. But if you'd put a corporate block in, then any pharmacist
01:38:26 4 in the Walmart system who had access to a computer, they could
01:38:30 5 plug -- run that prescription and know corporate has said don't
01:38:34 6 fill it; right?

01:38:36 7 A. Well, I would not have been the one to put the corporate
01:38:39 8 block in, but if that's -- and I -- again, I do not know how
01:38:43 9 the process was going to work.

01:38:44 10 Q. But that process came into place while you were still
01:38:49 11 there, didn't it?

01:38:52 12 A. I personally did not know of any corporate block that was
01:38:55 13 put on the pharmacists before I -- excuse me, on a physician
01:38:58 14 before I left. I was not involved in that.

01:39:00 15 Q. Well, sir, there were a number of corporate blocks that
01:39:05 16 were put into place before you left. They just didn't start
01:39:09 17 doing it until January of 2017; correct?

01:39:14 18 A. Sir, I don't know.

01:39:15 19 Q. Okay.

01:39:16 20 A. I wasn't involved in that.

01:39:17 21 Q. Look for Plaintiffs' Exhibit 21393.

01:39:40 22 Do you have that in front of you, sir?

01:39:43 23 A. Yes, sir.

01:39:44 24 Q. This is a list of prescribers that were blocked by Walmart
01:39:50 25 as of May 27th of 2020.

—Nelson (Cross by Lanier)—

01:39:55 1 You got it?

01:39:58 2 A. Yes, sir, but I have no idea about this.

01:40:01 3 Q. Well, that's -- that's the reason I'm asking you. Because
01:40:06 4 a number of these were blocked while you were still head or one
01:40:11 5 of the guys in corporate compliance. Did you know that?

01:40:19 6 A. I'm telling you I never saw this list before, sir.

01:40:26 7 Q. So you did not know that there was a list out where the
01:40:28 8 company was finally putting corporate blocks on people?

01:40:31 9 MR. MAJORAS: Objection. Foundation on this 2020
01:40:33 10 document.

01:40:33 11 MR. LANIER: Judge, this is his area and this was
01:40:36 12 his --

01:40:36 13 THE COURT: Well -- well, it's three years after he
01:40:39 14 left, so sustained.

01:40:40 15 MR. LANIER: Okay. But, Your Honor, what I would like
01:40:43 16 to ask him of is this sense: So, for example, Harold Budhram,
01:40:49 17 B-u-d-h-r-a-m, he was blocked January 23rd, 2017. That's while
01:40:58 18 you were still there, wasn't he? Did you know about him?

01:41:06 19 THE WITNESS: What was that doctor's name again, sir?

01:41:08 20 BY MR. LANIER:

01:41:08 21 Q. His name was Harold Budhram, B-u-d-h-r-a-m, blocked
01:41:17 22 January 23rd, 2017?

01:41:33 23 A. Sir, I never had a list of any kind which showed me which
01:41:35 24 doctors were blocked.

01:41:36 25 Q. Did you know about Jason Brajer being block while you were

—Nelson (Cross by Lanier)—

01:41:41 1 still at the company, February 10th, 2017, spelled B-r-a-j-e-r?

01:41:52 2 A. As I stated just a moment ago, I was never provided a list
01:41:54 3 of folks that were blocked, corporate politics, so I don't
01:41:59 4 know.

01:41:59 5 Q. But my question is -- my question is different than that.
01:42:02 6 It's not did you get a list. My question is do you know about
01:42:06 7 these people being blocked? Did you know about Dr. Frank
01:42:09 8 Bynes, B-y-n-e-s, being blocked January 16th, 2017, while
01:42:14 9 you're still at the company?

01:42:17 10 A. Not that I recall, sir.

01:42:24 11 Q. Did you know Dr. Horace Davis being blocked while you were
01:42:28 12 still at the company on January 23rd, 2017?

01:42:39 13 A. Again, not that I recall. I don't recall knowing of
01:42:40 14 physicians that had corporate blocks.

01:42:42 15 Q. Dr. Rasean, R-a-s-e-a-n, Hodge, blocked January 26th, 2017,
01:42:51 16 while you were still at the company. Did you know about that
01:42:53 17 doctor?

01:43:02 18 A. I do not recall.

01:43:02 19 Q. And instead of going through the rest of these that were
01:43:05 20 blocked while you were still at the company, I want to ask you
01:43:07 21 a different set of questions. There are a number of Ohio
01:43:13 22 doctors that the company, I believe, will get testimony from
01:43:17 23 later witnesses, the company ultimately blocked with a refusal
01:43:21 24 to fill. If those doctors -- I'd like to ask you their names
01:43:27 25 with a representation to you that there were complaints about

—Nelson (Cross by Lanier)—

01:43:30 1 these doctors even while you were there.

01:43:33 2 MR. MAJORAS: Objection to this leading the testimony.

01:43:37 3 THE COURT: Well, let's hear the question first.

01:43:39 4 BY MR. LANIER:

01:43:39 5 Q. Yeah.

01:43:39 6 My question is going to be this: With that
01:43:42 7 representation being made, do you have any memory of any of
01:43:48 8 these doctors and whether or not you stopped a blanket refusal
01:43:54 9 to fill earlier? One --

01:44:01 10 A. Sir, given the fact that Ohio was not my particular area of
01:44:06 11 supervision, it's very possible that someone could have sent me
01:44:09 12 an e-mail regarding a particular physician that at a later date
01:44:14 13 had a blanket refusal or, excuse me, had a blanket prescriber
01:44:18 14 block add to them. I don't recall specifically any one of
01:44:21 15 those doctors and certainly didn't have access to a list.

01:44:25 16 Q. Well, let me give you Plaintiffs' Exhibit 26890.

01:44:56 17 Do you have that document, sir?

01:44:57 18 A. I do.

01:45:00 19 Q. This is an e-mail to you dealing with an Ohio doctor.

01:45:06 20 You're Brad Nelson, aren't you?

01:45:12 21 A. Yes, sir.

01:45:13 22 Q. If you look on Page 2 it seems Dr. Lalli is evolving. "I
01:45:21 23 just had a patient call for Norco from Dr. Lalli, along with
01:45:26 24 her Soma and Valium." That's the trinity cocktail, isn't it?

01:45:31 25 A. That is one of the cocktail, yes.

—Nelson (Cross by Lanier)—

01:45:33 1 Q. "I know I can't tell the patients we don't fill for him, so
01:45:36 2 we've been filling some medications that are not the chronic
01:45:40 3 use of acute medication. But this means we've been filling
01:45:45 4 controls from him, such as Adderall. Of course this is after
01:45:49 5 an OARRS report. We even had one patient go as far as having
01:45:54 6 his Percocet changed to oxycodone to get around the chronic use
01:45:59 7 of an acute medication. We filled it because this patient also
01:46:05 8 sat and told me he'd been compiling a list of everyone,
01:46:09 9 pharmacist and pharmacy, who's refusing to fill his medications
01:46:12 10 and going back to Dr. Lalli with it."

01:46:15 11 Do you see that, sir?

01:46:21 12 A. That's what the document says.

01:46:22 13 Q. And this is from Cleveland, Ohio.

01:46:23 14 Do you see that as well?

01:46:29 15 A. That's what it says.

01:46:29 16 Q. And you're the one who gets the reply out on this, don't
01:46:35 17 you?

01:46:39 18 A. That's -- Mark Miller sent it to me.

01:46:43 19 Q. Yep. And you sent back your cut and paste with your usual
01:46:47 20 language.

01:46:47 21 Do you see that?

01:46:49 22 A. Yes, sir.

01:46:51 23 Q. So my question to you, recognizing that you have had input
01:46:55 24 in Ohio doctors and problems with them, is whether or not these
01:47:00 25 names ring a bell as anybody you had ever had come across your

—Nelson (Cross by Lanier)—

01:47:06 1 radar screen. Okay.

01:47:09 2 Doctor David Demangone, D-e-m-a-n-g-o-n-e.

01:47:17 3 Ring a bell?

01:47:19 4 A. Does not.

01:47:22 5 Q. Dr. Martin Escobar, E-s-c-o-b-a-r. Ring a bell?

01:47:30 6 A. It does not.

01:47:34 7 Q. Dr. Frank Lazzerini, L-a-z-z-e-r-i-n-i. Ring a bell?

01:47:45 8 A. It does not.

01:47:48 9 Q. James Prommersberger, P-r-o-m-m-e-r-s-b-e-r-g-e-r. Ring a
01:47:58 10 bell?

01:47:59 11 A. It does not.

01:48:02 12 Q. Dr. Frank Veres, V-e-r-e-s. Ring a bell?

01:48:10 13 A. It does not.

01:48:20 14 MR. LANIER: Your Honor, thank you for this time.

01:48:23 15 Mr. Nelson, thank you for this time. That ends
01:48:28 16 policies and actions. We've come to the end of the road, and
01:48:30 17 I'll pass the witness.

01:48:32 18 THE COURT: All right. Mr. Majoras, you are up if you
01:48:38 19 want.

01:48:40 20 MR. MAJORAS: Thank you, Your Honor. If I could just
01:48:42 21 have a moment.

01:48:46 22 MR. LANIER: Your Honor, I took a COVID test and I'm
01:48:48 23 negative. I've got some other cold, but I would definitely
01:48:52 24 urge everyone to -- I've been spitting up here, not on purpose,
01:48:55 25 but I'd urge someone to --

—Nelson (Direct by Majoras)—

01:48:56 1 THE COURT: Okay. I'll ask Mr. Pitts to clean.

01:49:01 2 MR. LANIER: And I'm glad to do it myself, but --

01:49:05 3 THE COURT: Okay. I'll have Mr. Pitts do it. That's
01:49:08 4 fine

01:49:08 5 MR. MAJORAS: Okay. I appreciate Mr. Pitts doing
01:49:10 6 that. Thank you.

01:50:44 7 (Brief pause in proceedings).

01:50:45 8 MR. MAJORAS: Thank you, Mr. Pitts.

01:51:09 9 I apologize in advance for everyone's ears.

01:51:20 10 May I proceed, Your Honor?

01:51:22 11 THE COURT: Yes, Mr. Majoras.

01:51:24 12 MR. MAJORAS: Good afternoon, folks.

01:51:24 13 DIRECT EXAMINATION OF BRAD NELSON

01:51:26 14 BY MR. MAJORAS:

01:51:26 15 Q. Good afternoon, Mr. Nelson. I'm used to looking at a
01:51:29 16 witness stand, so I'll be looking down at where I can see you
01:51:34 17 on a screen. If for any reason you're having any difficulty
01:51:36 18 hearing me, please let me know. I'll be happy to rephrase or
01:51:38 19 restart a question.

01:51:38 20 Can you hear me okay?

01:51:39 21 A. I can hear you great.

01:51:40 22 Q. Okay. I'm going to -- you and I have not met before, have
01:51:43 23 we?

01:51:44 24 A. Not that I'm aware of.

01:51:45 25 Q. My name is John Majoras. I'm one of the lawyers for

—Nelson (Direct by Majoras)—

01:51:48 1 Walmart, and I'm going to jump around just a little bit in
01:51:52 2 terms of some questions I have for you so if I lose track of
01:51:56 3 you somewhere, just please let me know and I'll start over.

01:51:59 4 Okay?

01:52:00 5 A. Yes, sir.

01:52:03 6 Q. I want to get a little bit of your back -- a little bit
01:52:05 7 more of your background than we heard earlier. And I'm talking
01:52:11 8 specifically about when you were the senior -- when you were
01:52:13 9 one of the senior managers of controlled substances. You were
01:52:18 10 not the only one in that position at Walmart, were you?

01:52:21 11 A. At one point when the position was first created in 2011, I
01:52:25 12 was the first person put in that role and then two additional
01:52:29 13 resources were added to it. I believe one 2012 and one in
01:52:34 14 2013.

01:52:35 15 Q. And when you refer to resources, you're talking
01:52:37 16 specifically about two other individuals; right?

01:52:41 17 A. Two individuals were added as well as some supportive
01:52:45 18 hourly staff.

01:52:45 19 Q. So the two other people in the similar position to you
01:52:51 20 after a year or so since you've been in was Ms. Shelley
01:52:55 21 Tustison; is that correct?

01:52:56 22 A. Shelley was the first one added in 2012.

01:52:59 23 Q. And then the second was Caroline Riogi; correct?

01:53:02 24 A. That is correct. I believe she came on in 2013.

01:53:05 25 Q. And when the three of you were in your positions, how did

—Nelson (Direct by Majoras)—

01:53:09 1 you divide up your responsibilities?

01:53:12 2 A. It was divided up geographically by boards of pharmacy
01:53:20 3 jurisdictions, if you will, and so we had three directors that
01:53:24 4 oversaw the various states and so we just aligned with each one
01:53:27 5 of those directors.

01:53:28 6 Q. So when you talk about boards of pharmacies, those are all
01:53:32 7 state level organizations?

01:53:34 8 A. To the best of my knowledge with the exception of
01:53:36 9 Washington, D.C.

01:53:38 10 Q. Okay. Do you recall which states you were responsible for?

01:53:45 11 A. I -- I remember most of them, but I would hate to provide
01:53:49 12 you a list because I'd probably forget one, but generally
01:53:52 13 speaking it was from Florida up to the Central Plains of the
01:53:55 14 United States, including Indiana, Michigan -- excuse me, not
01:54:00 15 Michigan -- but Montana and Minnesota, as I recall.

01:54:03 16 Q. And I believe you told Mr. Lanier that Ohio was not one of
01:54:05 17 your states for which you were responsible; right?

01:54:09 18 A. That is correct, although I would answer questions from
01:54:13 19 time to time.

01:54:13 20 Q. Okay. And who had the responsibility, when you had the
01:54:16 21 three people in that position, who had responsibility for Ohio?

01:54:20 22 A. My recollection was that was Caroline Riogi and Rick Irby.

01:54:26 23 Q. And so when Mr. Lanier read you a number of names of Ohio
01:54:29 24 doctors, is it surprising to you that you weren't familiar with
01:54:32 25 them?

—Nelson (Direct by Majoras)—

01:54:36 1 A. In most situations I would not have recalled the specific
01:54:41 2 doctor involved. My responsibility was to provide information
01:54:41 3 to the pharmacists so they could make their decision. It
01:54:43 4 wasn't to digest the individual doctor name.

01:54:47 5 Q. So during the period from -- when Ms. Riogi joined the
01:54:52 6 position at Walmart until the time that you left Walmart, was
01:54:56 7 she principally responsible for Ohio?

01:55:04 8 A. That's my recollection.

01:55:05 9 Q. Okay. I'm going to switch topics here for a moment.

01:55:07 10 Mr. Lanier spoke to you about some language that he
01:55:09 11 referred to from time to time as a mantra or a cut and paste.
01:55:14 12 And you're familiar with that now -- by now, aren't you?

01:55:17 13 A. Yes, sir.

01:55:17 14 Q. So when you provided that information in response to
01:55:21 15 questions, why were you doing that?

01:55:21 16 A. I --

01:55:28 17 Q. And by questions, I mean -- I'm sorry to interrupt. By
01:55:31 18 questions, I don't mean Mr. Lanier's questions, I mean, when
01:55:34 19 people while you were in your job were asking you questions,
01:55:36 20 why did you provide that information to them?

01:55:40 21 A. Well, it was our decision to send out that information so
01:55:43 22 we were all getting out consistent information irregardless of
01:55:47 23 what area of the country would send in a request, they wanted
01:55:50 24 to make sure we referred them to the policies and procedures
01:55:53 25 and best practices.

—Nelson (Direct by Majoras)—

01:55:54 1 Q. And do those policies and procedures that were part of that
01:55:58 2 information include how pharmacists were to go about their
01:56:01 3 decisions and whether to fill prescriptions?

01:56:04 4 A. It certainly gave them plenty of information with regards
01:56:07 5 to determining a valid patient relationship, determining a
01:56:12 6 professional judgment of the pharmacist, evaluation of red
01:56:14 7 flags and what to do in the case if they determined that the
01:56:19 8 prescription was not legitimate.

01:56:20 9 Q. And where would that information be found?

01:56:23 10 A. In the POMs.

01:56:25 11 Q. So the POMs are the procedural -- I'm sorry. Even I got it
01:56:28 12 wrong. The pharmacy operations manual?

01:56:32 13 A. That is correct.

01:56:33 14 Q. And those are -- a number of those are the numbers that you
01:56:38 15 referred to in that information that Mr. Lanier refers to as
01:56:40 16 your mantra or cut and paste; correct?

01:56:43 17 A. That is correct.

01:56:44 18 Q. Let's take a closer look at that if you would, please, and
01:56:47 19 I'm going to ask you to pull up a document that Mr. Lanier used
01:56:50 20 with you, which is Plaintiffs' Exhibit 14643. It would have
01:56:54 21 been early in the process if you have them stacked.

01:56:58 22 A. I do have them stacked. 14643?

01:57:01 23 Q. Yes, sir.

01:57:03 24 A. Okay. I have it.

01:57:05 25 Q. And we'll also have it up on the screen so if it's easier

—Nelson (Direct by Majoras)—

01:57:10 1 to see there, but either way you want to look at it.

01:57:13 2 Just to refresh everyone's recollection, this was an
01:57:15 3 e-mail from you to Mr. John Smasal dated January 28th, 2013;
01:57:24 4 correct?

01:57:24 5 A. Correct.

01:57:26 6 Q. So I want to look in that first paragraph, which it's a
01:57:28 7 fair amount of information, but I want to focus in particular
01:57:30 8 on something that Mr. Lanier did not read into the record.

01:57:34 9 Do you recall that he asked you about the company's
01:57:37 10 policies on blanket refusals to fill?

01:57:41 11 A. Several times.

01:57:42 12 Q. And -- and, in fact, on this particular one, I'll remind
01:57:45 13 you, he read the language about blanket refusals to fill in
01:57:48 14 that first paragraph.

01:57:49 15 Do you recall that?

01:57:51 16 A. Yes, sir.

01:57:52 17 Q. So now I'd like to direct your attention though to about
01:57:55 18 middle of that first paragraph, the sentence begins, "One of
01:57:59 19 the biggest mistakes."

01:58:02 20 Do you see where I am? It's on the screen in front of
01:58:06 21 you if you can see that.

01:58:07 22 A. Yes, sir, I see it.

01:58:08 23 Q. Okay. And then I'm going to take that all the way down to
01:58:11 24 where Mr. Lanier was reading about blanket refusals to fill, so
01:58:16 25 about four lines below that and it ends with "medical reasons."

—Nelson (Direct by Majoras)—

01:58:24 1 A. Okay.

01:58:25 2 Q. So rather than me do the reading, I'm going to ask you if
01:58:27 3 would you please read into the record this part of the material
01:58:32 4 that you were sending consistently in response to questions.

01:58:37 5 A. "One of the biggest mistakes the pharmacist makes is the
01:58:40 6 belief that they're required to fill a prescription from the
01:58:43 7 prescriber once they have called and established that the
01:58:46 8 prescription was written by the prescriber. That is not true.
01:58:49 9 The pharmacist is still able to refuse to fill a prescription
01:58:54 10 even after contacting the prescriber's office. If they choose
01:58:58 11 not to fill a prescription, they must follow POM 1703 for
01:59:03 12 refusal to fill and fraudulent prescriptions. Pharmacists are
01:59:07 13 encouraged to use -- to exercise their professional judgment
01:59:10 14 and refuse to fill prescriptions when they feel a prescription
01:59:13 15 is being written for other than legitimate medical reasons."

01:59:18 16 Q. So when you get questions from pharmacists in the field or
01:59:21 17 perhaps a pharmacist -- pharmacy manager about how a pharmacist
01:59:25 18 should treat information on a prescription, what is your advice
01:59:29 19 to that pharmacist?

01:59:33 20 A. Exercise their professional judgment, use all the
01:59:36 21 information available to them and the tools available to them
01:59:39 22 to determine whether or not they're comfortable filling a
01:59:42 23 prescription, and if not, they should refuse to fill the
01:59:45 24 prescription and create the documentation.

01:59:47 25 Q. Have you ever provided any advice to a pharmacist that if

—Nelson (Direct by Majoras)—

01:59:51 1 they were uncomfortable in filling a prescription they should
01:59:54 2 go ahead and fill it anyway?

01:59:56 3 A. Not that I am aware of. I certainly don't recall that.

02:00:05 4 Q. I'd like now to refer you to a document which is in the
02:00:12 5 binder that you would have from the defendants, from Walmart, I
02:00:17 6 believe. It's a binder with tabs. It goes all the way up to
02:00:19 7 Tab 20.

02:00:20 8 Do you have that, sir?

02:00:23 9 A. I have one that has Tab 1 through 5.

02:00:26 10 MR. LANIER: Your Honor, if they were going to use
02:00:28 11 documents --

02:00:28 12 THE COURT: I agree. They should be -- should have
02:00:30 13 been or should not be --

02:00:34 14 MR. MAJORAS: This was placed on our exhibit list last
02:00:36 15 evening. The document exhibit is Walmart MDL 01575.

02:00:45 16 MR. LANIER: Your Honor, they were supposed to give us
02:00:46 17 a list of any documents they would use with this witness last
02:00:50 18 night under the rules.

02:00:51 19 MR. MAJORAS: Your Honor, this is direct --
02:00:53 20 cross-examination responding to what Mr. Lanier brought up on
02:00:56 21 his direct examination.

02:01:13 22 MR. LANIER: I mean, Your Honor, I don't know if you
02:01:35 23 want me to make my objections --

02:01:38 24 THE COURT: All right. We'll go on the headphones.

02:01:54 25 (At sidebar at 2:01 p.m.)

—Nelson (Direct by Majoras)—

02:01:54 1 MR. LANIER: Your Honor, this morning I made note, I
02:01:57 2 went over to the table and I said, y'all never gave us a list
02:02:00 3 of documents that you might use in direct on your witness. I
02:02:05 4 said I assume from that you're not going to be using any, I
02:02:08 5 mean, you know, and it was an, uh, shucks, uh, shucks.

02:02:12 6 The reason the provision was put into place that we've
02:02:15 7 adhered to every day of giving documents that we'll use on our
02:02:19 8 witnesses in direct is for this very reason. So if you look at
02:02:24 9 this, for example, the first thing that jumps out at you is
02:02:28 10 there's an e-mail from William Dunn to Brad Nelson. I don't
02:02:34 11 have any clue who William Dunn is, but it's clearly hearsay,
02:02:38 12 and I don't understand even remotely. So he got an e-mail from
02:02:41 13 this guy named William Dunn. I've had no chance to prepare my
02:02:45 14 objections to it, but it's hearsay, and he's just setting it
02:02:50 15 down in front, and what's particularly aggravating is he's been
02:02:54 16 given a notebook, evidently, of exhibits last night.

02:02:57 17 THE COURT: Well, I want to -- I want to find out if
02:03:00 18 these documents were identified, Mr. Majoras, for the
02:03:06 19 plaintiffs that you were planning to use with Mr. Nelson.

02:03:08 20 MR. MAJORAS: I did not identify specifically last
02:03:10 21 evening these documents would be used with Mr. Nelson. I
02:03:13 22 believe that this goes directly to the cross-examination -- or
02:03:17 23 the direct examination that Mr. Lanier put on and I'm in
02:03:20 24 cross-examination mode. These aren't your issues.

02:03:23 25 THE COURT: No. No. This is not cross-examination.

—Nelson (Direct by Majoras)—

02:03:25 1 We went through this and this is really direct. He's your
02:03:29 2 witness. So these should have been provided.

02:03:40 3 MR. LANIER: I mean, so this is clearly hearsay.
02:03:42 4 Evidently it was added to their exhibit list, though not
02:03:46 5 singled out to be used but at 11:45 last night, and, I mean,
02:03:52 6 this is -- this is ambush.

02:03:56 7 THE COURT: I mean, we knew Mr. Nelson was going to be
02:03:58 8 called today several days ago, I mean, over a week ago. We've
02:04:04 9 set aside today for that.

02:04:08 10 MR. MAJORAS: And I'm getting their information last
02:04:10 11 night in terms of what their exam is going to be, and I've got
02:04:12 12 to form their response to that.

02:04:14 13 MR. LANIER: No, no, no. Ours was cross-examination.
02:04:16 14 We did not give you any info last night for cross-examination.
02:04:19 15 Cross-examination you're not required to. So this is not, gee,
02:04:22 16 you got ours and you're responding. This isn't at all. All
02:04:25 17 we -- all I did is I took the documents that were late produced
02:04:28 18 to us and I used those ones that had Nelson's name on them.

02:04:33 19 THE COURT: Those were the only ones that --

02:04:35 20 MR. LANIER: That's all I used.

02:04:37 21 MR. MAJORAS: No. Mr. Lanier -- the majority of his
02:04:40 22 documents were not late produced documents, the majority --

02:04:43 23 MR. LANIER: Absolutely were. Oh, no. Oh, no.

02:04:45 24 MR. MAJORAS: We'd be happy to provide the Court
02:04:48 25 information on that one, Your Honor.

—Nelson (Direct by Majoras)—

02:04:49 1 MR. LANIER: Yeah, I would too.

02:04:50 2 THE COURT: All right. Everyone's just using up --
02:04:52 3 this is all Walmart's time. I don't -- you know -- how many --
02:04:59 4 how many documents are you going to use, Mr. Majoras, that you
02:05:02 5 didn't identify? I mean, yes, this is hearsay. It did go to
02:05:05 6 him. Maybe he remembers it; maybe not. I --

02:05:09 7 MR. MAJORAS: No more than the hearsay we've been
02:05:12 8 hearing throughout this examination, Your Honor, but this I
02:05:16 9 believe is the only document that was not used in his exam
02:05:18 10 earlier that I plan to use.

02:05:20 11 THE COURT: Well, all right. I'll -- I will allow
02:05:22 12 you -- that's -- on that representation, I'll allow you to show
02:05:26 13 this witness the document. If he remembers it, before you read
02:05:30 14 it to anyone, if he remembers it then -- then you can ask him
02:05:38 15 about it. If he doesn't, then you got to move on.

02:05:40 16 MR. MAJORAS: Okay. Thank you.

02:05:42 17 MR. LANIER: Thank you, Judge.

02:05:42 18 (In open court at 2:05 p.m.)

02:05:42 19 BY MR. MAJORAS:

02:06:05 20 Q. So, Mr. Nelson, what I'm going to ask you to do is take
02:06:08 21 your binder with the five documents and turn to Tab 5 to the
02:06:12 22 binder. I'm not going to ask you do anything in terms of
02:06:14 23 reading it out loud just yet.

02:06:18 24 For the record, this is Walmart Exhibit 01575.

02:06:23 25 Do you see that sticker on your document so that we're

—Nelson (Direct by Majoras)—

02:06:26 1 looking at the same thing, sir?

02:06:27 2 A. I do.

02:06:28 3 Q. Okay. If you would just read to yourself, it's a two-part
02:06:33 4 e-mail, just read the bottom e-mail and the top e-mail to
02:06:36 5 yourself. My first question to you is simply do you recall
02:06:41 6 this document.

02:06:57 7 A. It doesn't immediately ring any bells.

02:07:05 8 Q. Do you know who Mr. Williams Dunn is?

02:07:15 9 A. I don't have any recollection of Mr. Dunn.

02:07:16 10 Q. Do you recall Mr. Dunn talking about an investigation of a
02:07:22 11 complaint that was made about his Walmart store in --

02:07:26 12 MR. LANIER: Objection.

02:07:27 13 THE COURT: Sustained.

02:07:34 14 MR. MAJORAS: Okay.

02:07:36 15 BY MR. MAJORAS:

02:07:38 16 Q. Mr. Nelson, go ahead and put that aside. So keeping in
02:07:40 17 mind about the information what a pharmacist should do with an
02:07:45 18 individual prescription. If a pharmacist were confronted with
02:07:48 19 multiple prescriptions from a particular prescriber, what is
02:07:50 20 the process that pharmacist should do under Walmart policies
02:07:55 21 when you were there prior to 2017?

02:08:02 22 A. They should have been guided by using the POMs to determine
02:08:04 23 whether or not the prescription was written for legitimate
02:08:10 24 medical purposes by getting with the patient and the
02:08:16 25 prescriber, using the prescription monitoring programs and

—Nelson (Direct by Majoras)—

02:08:18 1 their experience as to determine whether or not there was some
02:08:21 2 reason that would spark red flags that couldn't be resolved and
02:08:28 3 then decide whether they should fill the prescription or not.

02:08:31 4 Q. And if they had information from their own experience in
02:08:34 5 terms of what they had seen or heard at their store about a
02:08:37 6 prescriber, could they factor that into their analysis in using
02:08:42 7 professional judgment?

02:08:44 8 A. I would assume they would do that.

02:08:45 9 Q. You would expect it, wouldn't you?

02:08:47 10 A. I would do that if it was me.

02:08:49 11 Q. Sir, if a pharmacist were -- again, back to what I started.
02:08:54 12 If a pharmacist had multiple prescriptions from a prescriber
02:08:58 13 about which that pharmacist had some doubt, how should that
02:09:01 14 pharmacist treat each individual prescription?

02:09:05 15 A. They should evaluate each prescription based on the way
02:09:08 16 it's written and what the particular patient's needs were and
02:09:11 17 then based on their professional judgment determine whether
02:09:15 18 they should fill or not fill that prescription.

02:09:18 19 Q. And --

02:09:18 20 A. Whether it's one prescription or six.

02:09:20 21 Q. And did -- and was there any policy in place that you had,
02:09:23 22 or that you advised pharmacists about, concerning whether or
02:09:27 23 not they could refuse multiple prescriptions from the same
02:09:29 24 doctor?

02:09:32 25 A. I am not aware of a policy that stated they could refuse

—Nelson (Direct by Majoras)—

02:09:36 1 multiple prescriptions at one time other than evaluating them
02:09:39 2 one at a time.

02:09:41 3 Q. And once a pharmacist did refuse to fill a prescription,
02:09:44 4 what was the procedure that pharmacist should do?

02:09:49 5 A. The outline of 1703, that POM requested them and required
02:09:53 6 them to fill out a refusal to fill documentation form, it was a
02:09:58 7 web form.

02:09:59 8 Q. Okay. Let's break that down a little bit. Whether you say
02:10:02 9 a refusal to fill documents form, for those of us who don't
02:10:05 10 work at Walmart, what do you mean?

02:10:06 11 A. It was a document that they had access to through their
02:10:11 12 computer system, it was a web-based, in other words,
02:10:18 13 internet-based and it would fill out this document, and once
02:10:20 14 they were complete with the document they would transmit it and
02:10:23 15 it was sent up to the home office.

02:10:25 16 Q. And why did you want that?

02:10:27 17 A. That document was requested to be sent to the DEA and we
02:10:33 18 compiled that information and sent it to the DEA on a daily
02:10:36 19 basis.

02:10:36 20 Q. What was your specific role in sending Walmart's refusal to
02:10:40 21 fill documentation to the DEA?

02:10:45 22 A. Each morning when I arrived at the office there would be an
02:10:49 23 inbox where all these web forms came to. There was a process
02:10:54 24 where that web -- those web forms were converted to an Excel
02:10:58 25 spreadsheet. I sorted the Excel spreadsheet by state or

—Nelson (Direct by Majoras)—

02:11:02 1 actually by DEA region and then would fax a copy of the refusal
02:11:09 2 to fill that came from that particular DEA's jurisdiction to
02:11:13 3 them on a daily basis.

02:11:16 4 Q. And did you ever have any contact with the DEA about
02:11:19 5 refusals to fill, other than what you just described?

02:11:24 6 A. Occasionally the DEA offices that we sent the information
02:11:28 7 to would contact us and request additional information or want
02:11:34 8 to talk to the pharmacist.

02:11:36 9 Q. And what was your policy in responding to the DEA when you
02:11:38 10 got requests?

02:11:41 11 A. Cooperate with them and provide what information they
02:11:43 12 needed.

02:11:44 13 Q. And what about if they had -- did any ask you to get in
02:11:47 14 touch with the individual pharmacist?

02:11:50 15 A. Occasionally that would occur.

02:11:52 16 Q. And what would you do in that case, situation?

02:11:57 17 A. My recollection was that each DEA agent acted a little bit
02:12:04 18 differently, but most of the time it was, will you please
02:12:06 19 contact this pharmacist and give them my contact information
02:12:10 20 because when they show up at a store it generally alarms the
02:12:13 21 pharmacist, and that was not their intent, they generally want
02:12:15 22 to just speak to them about the particular prescriber or the
02:12:20 23 particular patient.

02:12:23 24 Q. I'm going to switch gears again. Mr. Lanier asked you
02:12:26 25 questions about information in the Archer system.

—Nelson (Direct by Majoras)—

02:12:29 1 Do you recall that?

02:12:31 2 A. Yes, sir.

02:12:32 3 Q. The Archer system is one of the names that Walmart has had
02:12:35 4 over time for its systems that were made available within the
02:12:39 5 health and wellness division?

02:12:42 6 A. That is correct.

02:12:44 7 Q. And there may have been some confusion over whether it was
02:12:49 8 a blanket refusal to fill or a corporate, but I'm going to ask
02:12:52 9 you to pull out an exhibit he showed you which is plaintiffs'
02:12:55 10 08037.

02:13:05 11 A. Yes, sir. I have that.

02:13:07 12 Q. So if you look -- if you look at the -- the top of the
02:13:11 13 second page, which is the e-mail to you from Mr. Billings, and
02:13:16 14 at the top, the very first question he asked you, "Can you look
02:13:19 15 into where we are at with RTS for Lamonda at Store 40?"

02:13:23 16 Do you see that, sir?

02:13:25 17 A. I do.

02:13:26 18 Q. And you respond, "Josh" -- back on the first page -- "Josh,
02:13:30 19 you can do that in Archer by putting his DEA number in the
02:13:34 20 search box and hitting enter."

02:13:37 21 Do you see that?

02:13:39 22 A. I do.

02:13:39 23 Q. And when you say by -- you can do that, what are you --
02:13:42 24 what are you telling him he could find out if he puts the DEA
02:13:45 25 number in Archer?

—Nelson (Direct by Majoras)—

02:13:48 1 A. As I recall, it would bring up all of the refusal to fills
02:13:52 2 that were reported for that particular DEA number from all the
02:13:55 3 Walmart pharmacies.

02:13:57 4 Q. So the refusals to fill would be the individual
02:14:00 5 prescriptions that a pharmacist, using their judgment, decided
02:14:04 6 not to fill; is that right?

02:14:07 7 A. Yeah. I guess I don't want to call them prescriptions, I
02:14:10 8 want to call them individual items that the pharmacist chose
02:14:14 9 not to fill because I don't want to call them a prescription if
02:14:18 10 they're not filled.

02:14:18 11 Q. Okay. But these were an attempt by someone to come to the
02:14:21 12 pharmacy to fill what they purported to believe was a
02:14:25 13 prescription. Is that fair?

02:14:26 14 A. That is correct.

02:14:27 15 Q. Okay. And is it your understanding, as you recall back to
02:14:32 16 your time at Walmart and Archer, that one can view the
02:14:37 17 different refusals to fill that Walmart had in its system
02:14:40 18 through the Archer system?

02:14:45 19 A. Sir, that did become available at some point in time, but I
02:14:49 20 do not recall the exact date.

02:14:50 21 Q. Okay. When lawyers are searching for documents it means
02:15:11 22 I'm almost done, so that's good news for all of us.

02:15:13 23 Mr. Nelson, thinking back to your time, and in
02:15:18 24 particular as you responded to questions from pharmacists and
02:15:22 25 pharmacy directors, how did you go about your job in trying to

—Nelson (Direct by Majoras)—

02:15:27 1 respond to that? What was your guiding principle?

02:15:32 2 A. I viewed myself as a resource to provide information and
02:15:36 3 clarity on policies and procedures that were available to us at
02:15:40 4 Walmart.

02:15:42 5 Q. And in terms of communicating that to the people who asked
02:15:46 6 you questions, what was your goal in those communications?

02:15:54 7 A. To give consistent information that was accurate, and it
02:15:58 8 would guide the pharmacists and the market directors and
02:16:01 9 regional managers into filling prescriptions that were
02:16:06 10 legitimate and for refusing to fill prescriptions that they
02:16:09 11 felt were not legitimate by a prescriber.

02:16:14 12 Q. Mr. Nelson, just as a reminder I think it may have come up
02:16:19 13 earlier in the trial, but you're actually a trained pharmacist;
02:16:22 14 correct?

02:16:22 15 A. That is correct.

02:16:25 16 MR. MAJORAS: Thank you, sir. I have no further
02:16:26 17 questions at this time.

02:16:28 18 THE COURT: Okay. If any of the jurors have questions
02:16:33 19 that they wish posed to Mr. Nelson, if you could please write
02:16:36 20 them down, give them to Mr. Pitts and we'll show them to
02:16:40 21 counsel.

02:16:55 22 (Brief pause in proceedings).

02:19:14 23 MR. LANIER: Mr. Nelson --

02:19:16 24 THE WITNESS: Yes, sir.

02:19:18 25 MR. LANIER: Let me grab one more thing.

—Nelson (Recross by Lanier)—

RECROSS-EXAMINATION OF BRAD NELSON

BY MR. LANIER:

Q. I don't have a lot of questions for you. The jury has a number of questions for you, so I'm going to put them on the screen so that you can more easily see them and I'll read them out loud because they've got to go into the record, though, obviously, we can all read it once it's on the screen, but this way they're read into the record.

"If Caroline Riogi was out of the office or on vacation, who would handle her regions?"

A. It was our practice at that time if one of the senior directors or managers was out of the office, they would leave an out-of-office response saying, "Please contact Shelley Tustison or Brad Nelson." It just depended upon whoever would have made a request of at that time.

Q. And in that regard, I had a couple of questions that I was going to ask you about Ms. Riogi and Ms. Tustison, so I'll throw them in here because they make sense with the juror's question.

Do you know what kind of training they had before they took their jobs?

A. Well, they were both registered pharmacists and they worked as pharmacy managers at their prospective locations before they were -- before they applied for and were promoted to this position. After they got in their role, they spent time with

—Nelson (Recross by Lanier)—

02:20:53 1 the other director or senior manager that was in place at the
02:20:57 2 time to get experience.

02:21:02 3 Q. Okay. And I think they were in their late twenties at the
02:21:05 4 time or something like that to give us an idea of how many
02:21:07 5 years they had been out of school.

02:21:09 6 Does that seem right?

02:21:10 7 A. I honestly don't know their age at that particular point in
02:21:20 8 time. They had probably be practicing four to five years in
02:21:22 9 their particular pharmacy, but I'm not exactly sure what their
02:21:26 10 birthdays were.

02:21:27 11 Q. And to the best of your knowledge would they be giving the
02:21:30 12 same counsel that you were you or were you giving something
02:21:33 13 other than just Walmart policy?

02:21:39 14 A. To my knowledge, we were all sending out that same
02:21:44 15 information that I sent out. It was something that we used
02:21:47 16 together and gave consistent guidelines -- consistent guidance
02:21:52 17 that way.

02:21:53 18 Q. All right. Next question from a juror: "Prior to 2012,
02:22:01 19 would you have been responsible for the State of Ohio?"

02:22:10 20 A. I guess the first year when I was the senior manager of
02:22:16 21 controlled substances I was helping in all states. So, 2011,
02:22:22 22 2012, I was kind of over all states, I guess you would say.
02:22:25 23 Although most of the time the state issues were handled by the
02:22:30 24 senior directors, which were above my supervision level.
02:22:34 25 That's who handled it prior to 2011, would have been the senior

—Nelson (Recross by Lanier)—

02:22:39 1 directors.

02:22:40 2 Q. All right. The next question, I believe, is in reference
02:22:43 3 to the exhibit that I used with you where it showed with
02:22:52 4 Dr. Lalli, L-a-l-l-i, you responding to that Cleveland, Ohio,
02:22:57 5 situation.

02:22:59 6 And, so, within that framework or maybe another, and I
02:23:03 7 may just be wrong on trying to understand what the juror is
02:23:05 8 saying, but "If Mr. Nelson did not cover Ohio, why didn't you
02:23:10 9 refer to a colleague who might be more familiar with the
02:23:12 10 doctors in that state?"

02:23:18 11 A. Do you remember which document that was? I believe that
02:23:20 12 was the one where Mark Miller sent that to me?

02:23:24 13 Q. It was Dr. Lalli, L-a-l-l-i. I'll pull it up.

02:23:26 14 A. I understand that. Hold on. I might have it right here.

02:23:29 15 Yes, I have it here, sir, and I believe that is 26890
02:23:35 16 is that document, and I can tell you that Mark Miller was an
02:23:40 17 individual who I hired out of pharmacy school to become a
02:23:45 18 pharmacy manager and then Mark Miller became a district manager
02:23:50 19 who worked out of the Ohio area. And so Mark felt very
02:23:53 20 comfortable contacting me, so I assume -- and that's what this
02:23:56 21 is, an assumption, because I don't recall on June 18th of 2013,
02:24:01 22 if -- 2013, if Mr. Nocci (phonetic) was on vacation at that
02:24:08 23 time or not, or if it was just Mr. Miller who felt comfortable
02:24:11 24 contacting me directly because he had -- I think we have a
02:24:14 25 professional relationship and a personal relationship, and I

—Nelson (Recross by Lanier)—

02:24:16 1 assume that's why.

02:24:18 2 Q. Okay. And so that's why you're answering an Ohio situation
02:24:22 3 June of 2013, to the best of your measured thought. Fair?

02:24:31 4 A. Yes. And in regards it would have been the same
02:24:35 5 information if Carol had sent it to him as well.

02:24:39 6 Q. But again, did you say anything different than you believed
02:24:41 7 the other two people in your job would have been saying?

02:24:46 8 A. I don't believe so.

02:24:47 9 Q. Okay. Next. "Is Archer different than the computer system
02:24:53 10 a pharmacist would use to enter information about the
02:24:56 11 prescription?"

02:24:57 12 Why don't we stop there and then we'll keep going, but
02:25:00 13 first answer the first question --

02:25:02 14 A. The answer to that question is Archer is a web-based
02:25:08 15 process software that they enter the information into. You
02:25:12 16 could access it using the same computer system that we used to
02:25:16 17 fill prescriptions, but it was not in that same software where
02:25:20 18 the prescription filling is conducted.

02:25:23 19 Does that make sense?

02:25:25 20 Q. I'm not sure.

02:25:28 21 A. Okay. Let me think about it.

02:25:35 22 Q. Let's -- let's continue with the follow-up question and see
02:25:37 23 if that helps. "So the pharmacist would look this up separate?
02:25:42 24 Did they have an Archer system and a separate system?"

02:25:50 25 A. The second question is, yes, the pharmacist would look up

—Nelson (Recross by Lanier)—

02:25:54 1 information in Archer separately.

02:25:57 2 Q. Okay.

02:25:58 3 A. From the actual filling computer.

02:25:59 4 Q. And then the third question, "Is Archer connected to the
02:26:07 5 PMP or is that separate yet again?"

02:26:10 6 A. Yeah, the PMP is for prescriptions that were actually
02:26:13 7 filled and Archer is for notating prescriptions that were not
02:26:16 8 filled. So they are separate systems. One's operated by the
02:26:19 9 individual states, which is the PMP, and Archer was just a
02:26:22 10 software program that we used at Walmart to capture incident
02:26:25 11 information.

02:26:26 12 Q. But I want to press you a little bit on that because the
02:26:29 13 PMPs are run by the pharmacists to help them determine whether
02:26:34 14 to fill. True?

02:26:37 15 MR. MAJORAS: Objection to form.

02:26:38 16 THE COURT: Well, overruled.

02:26:41 17 THE WITNESS: I'm not sure I understand completely,
02:26:43 18 but a PMP is operated by the state -- by the state. It's not
02:26:48 19 operated by the pharmacist.

02:26:48 20 BY MR. LANIER:

02:26:49 21 Q. Right. So, for example -- I'm sorry. For example, in
02:26:54 22 Ohio, as of 2011, if a pharmacist was going to fill a certain
02:27:00 23 prescription and there's only -- it was only mandatory under a
02:27:03 24 certain specific guideline, but if there was an oxy 30 that was
02:27:10 25 going to be filled, before the pharmacist fills it, the

—Nelson (Recross by Lanier)—

02:27:12 1 pharmacist was required to look up the PMP, it's called OARRS
02:27:16 2 in Ohio, and make a determination if there are any red flags or
02:27:24 3 issues. So, in that sense, check the PMP before dispensing.

02:27:30 4 Are you tracking with me?

02:27:32 5 A. I can't speak to whether that was OARRS or not, it may have
02:27:37 6 been. In 2011, many states had that requirement as PMPs came
02:27:42 7 online.

02:27:43 8 Q. But the point then, in terms of the juror's question for me
02:27:45 9 at least, would be Archer did not check the PMP either; the PMP
02:27:51 10 would have to be checked independently. Is that fair?

02:27:53 11 A. That is accurate.

02:27:55 12 Q. Thank you.

02:27:56 13 And then the final set of juror questions at this
02:28:01 14 point is two on this sheet. The first one says, "If there was
02:28:07 15 an update to the prescription -- I mean, the pharmacy operating
02:28:12 16 manual in regards to blanket refusals being prohibited, where
02:28:16 17 in the original does it state that Walmart had a policy
02:28:20 18 prohibiting blanket refusals and that it was stated by the
02:28:23 19 state medical board of pharmacy? In other words, was there an
02:28:28 20 actual POM in writing?"

02:28:33 21 A. Yes. POM 1703 contained information saying that refusal to
02:28:39 22 fills -- or, excuse me, blanket refusals were prohibited.

02:28:44 23 Q. I've got -- I've got a copy of POM 1703 as it existed in
02:28:53 24 July of 2015. It's Plaintiffs' Exhibit 21090.

02:28:59 25 I did not know this would come up, so I don't think

—Nelson (Recross by Lanier)—

02:29:01 1 it's in your box, sir, but if you can look at the screen, and
02:29:05 2 I'm glad to turn the pages in any way, shape, form, or fashion
02:29:09 3 that you might want, but do you recognize at least the title
02:29:12 4 that this is POM 1703?

02:29:18 5 A. That looks -- looks like the way a POM would have been
02:29:20 6 written.

02:29:21 7 Q. And is it true that POM 1703 only dealt with, according to
02:29:26 8 the title, "Forged or fraudulent prescription procedures"?

02:29:33 9 A. I believe it also covers refusal to fill.

02:29:37 10 Q. But is it refusals to fill in a situation that are forged
02:29:41 11 or fraudulent?

02:29:46 12 A. Don't recall.

02:29:47 13 Q. If you look, you'll see it says, "Potential indicators of
02:29:51 14 fraudulent, forged, or altered prescriptions." Then it gives a
02:29:56 15 host of bullet points.

02:29:59 16 Do you see that?

02:30:00 17 A. Yes, sir. I do.

02:30:02 18 Q. "Prescriptions written in more than one color ink,
02:30:06 19 unusually high quantities or dosages which differ from usual
02:30:11 20 medical use, different handwriting styles or penmanship that's
02:30:15 21 too good or too legible, prescriptions written in full without
02:30:21 22 standard abbreviations. See, these are all about fraudulent,
02:30:25 23 forged, or altered prescriptions."

02:30:27 24 Do you see that, sir?

02:30:31 25 A. I see that's on the document, yes, sir.

—Nelson (Recross by Lanier)—

02:30:34 1 Q. And then if we continue to look at the rest of the POM, it
02:30:41 2 does talk about if there's evidence of doctor shopping to
02:30:51 3 obtain prescriptions for controlled substances, it talks about
02:30:56 4 detect prescriptions that may have been forged and altered and
02:30:59 5 how to deal with that.

02:31:00 6 Do you see that as well?

02:31:08 7 A. It appears that that's included, yes, sir.

02:31:10 8 Q. And then if you go to the third page of forged or
02:31:13 9 fraudulent prescription procedures, it talks about verifying
02:31:18 10 and reporting forged or altered prescriptions.

02:31:21 11 Do you see that also?

02:31:27 12 A. I do.

02:31:28 13 Q. It says, in Point 4, "If the prescribing practitioner
02:31:33 14 validates that the prescription is legitimate, document in the
02:31:37 15 prescription note sections of CONEXIS."

02:31:39 16 Is CONEXIS that other computer program you were
02:31:45 17 talking about independent of Archer?

02:31:45 18 A. That is correct.

02:31:52 19 Q. But, sir, within the confines of this, is there any place
02:31:55 20 we ought to be looking to see whether or not there's anything
02:32:01 21 at all about a blanket refusal to fill policy?

02:32:10 22 A. Without a copy of it right in front of me, sir, I don't
02:32:12 23 remember where it's at. It may be in that one or it could be a
02:32:15 24 different POM.

02:32:16 25 Q. Okay. Next juror question: "There was a mention as to the

—Nelson (Recross by Lanier)—

02:32:21 1 refusal to fill form not being filled correctly. Who would
02:32:26 2 follow up to make sure that it was resubmitted and not just
02:32:29 3 left out and not reported and not considered for a block?

02:32:35 4 "What was the procedure, sir?"

02:32:38 5 A. When the pharmacist filled out the web form, as they're
02:32:41 6 filling out the web form, if they left off a required field, it
02:32:47 7 would stop them when they submitted -- submitted -- or
02:32:50 8 attempted to submit it and say, you must fill in this
02:32:53 9 particular field. Kind of like if you're buying something on
02:32:56 10 the internet and you try to put in your credit card number and
02:32:58 11 you leave off that little CV code at the end, it will stop you
02:33:01 12 and say, wait, time out, you got to put the CV code in. That's
02:33:05 13 kind of what the web form did, is it stopped and put in red,
02:33:10 14 this information is required. So the pharmacist filling out
02:33:13 15 the form would have been the individual that would have had to
02:33:16 16 correct it in order to submit it.

02:33:19 17 Q. All right. And then for my last set of questions from what
02:33:26 18 you were asked by Mr. Majoras, first of all, you were asked
02:33:32 19 about your form response in one of the exhibits that I used.
02:33:36 20 It was Exhibit 14643.

02:33:38 21 Do you recall that?

02:33:43 22 A. Let me find it again, but go ahead.

02:33:45 23 Q. Yeah, this is the one where Mr. Majoras pointed out that I
02:33:48 24 didn't read everything word for word, that I had left out this
02:33:51 25 section right here (indicating) and he didn't add it, but I

—Nelson (Recross by Lanier)—

02:33:55 1 also left out these sections down here (indicating).

02:33:57 2 Do you see that?

02:33:59 3 A. Yes, sir.

02:34:00 4 Q. I don't -- I don't want there to be any -- well, help me
02:34:04 5 understand if I've left out anything that's pertinent to what
02:34:06 6 we're talking about. Okay?

02:34:10 7 What you say here, and I'll use a different color
02:34:14 8 highlighter to make it clear, that this is additional, is you
02:34:18 9 say, "One of the biggest mistakes the pharmacists make is a
02:34:22 10 belief they're required to fill a prescription from a
02:34:23 11 prescriber once they've called and established the prescription
02:34:27 12 was written by the prescriber."

02:34:29 13 Nobody fusses that; right?

02:34:32 14 A. Correct.

02:34:34 15 Q. This is not true. The pharmacist is still able to refuse
02:34:39 16 to fill a prescription even after contacting the prescriber's
02:34:42 17 office.

02:34:42 18 No fuss on that either, right?

02:34:47 19 A. Not from me.

02:34:48 20 Q. If they choose to not fill a prescription, they must follow
02:34:51 21 POM 1703 for refusal to fill and fraudulent prescriptions.

02:34:57 22 Do you see that?

02:35:04 23 A. I do.

02:35:04 24 Q. And that's what we were looking at that talked about
02:35:06 25 potential indicators of fraudulent, forged, or altered

—Nelson (Recross by Lanier)—

02:35:09 1 prescriptions. True?

02:35:13 2 A. Well, that -- of the parts of the POM you've showed me,
02:35:18 3 sir --

02:35:18 4 Q. And then --

02:35:18 5 A. -- I mean, I don't know where it's all at, but yes, 1703 is
02:35:21 6 the document that should require --

02:35:23 7 Q. Because you --

02:35:24 8 A. -- require them to fill out a refusal to fill form.

02:35:25 9 Q. Sorry. Sorry. Because you don't have the POM in front of
02:35:28 10 you, I want to see if there's a section here that slipped our
02:35:33 11 consideration so that we're accurate on the record. Okay? So
02:35:38 12 I'm going to just show each page and have you look at it. If I
02:35:42 13 need to zoom in more than that we'll lose the page but I'll be
02:35:47 14 glad to. The sections are written out in bold on the side
02:35:50 15 about verifying and reporting forged or altered prescriptions.

02:35:54 16 You see that?

02:35:54 17 A. Okay.

02:35:55 18 Q. And this is July of 2015; correct? Do you see that?

02:36:02 19 A. That's correct, sir.

02:36:04 20 Q. And then we've got, on the next page, more information
02:36:08 21 about verifying and reporting forged or altered prescriptions.

02:36:13 22 Do you see that as well?

02:36:17 23 A. Yes, sir.

02:36:18 24 Q. And then if we flip to the next page, we've got more on
02:36:25 25 verifying and reporting forged or altered prescriptions.

—Nelson (Recross by Lanier)—

02:36:30 1 Do you see that as well?

02:36:32 2 A. Yes.

02:36:33 3 Q. And then we go to Page 5 where we've got more on verifying
02:36:40 4 and reporting forged or altered prescriptions.

02:36:44 5 Do you see that as well?

02:36:46 6 A. Yes, sir.

02:36:47 7 Q. Now, here, under point 10, it says -- and this is under
02:36:53 8 point 10 of verifying and reporting forged or altered
02:36:56 9 prescriptions, "In any circumstance where the pharmacist
02:36:58 10 declines to fill a prescription because the pharmacist has
02:37:03 11 concluded the prescription is forged, altered, or issued for
02:37:06 12 other than a legitimate medical purpose by a practitioner
02:37:11 13 acting outside the usual course of professional practice, and
02:37:19 14 that conclusion can be reached because of a written or verbal
02:37:22 15 statement by the prescriber or in the exercise of pharmacist's
02:37:25 16 professional judgment, a refusal to fill prescription report
02:37:29 17 shall be submit the -- a refusal to fill prescription report
02:37:35 18 shall be submit the."

02:37:40 19 A. That's -- that's what it says.

02:37:41 20 Q. Okay. You got any clue what it was supposed to say?

02:37:47 21 A. Sir, I don't know. I'm assuming it should have said
02:37:50 22 something along the line of shall be submitted. Report shall
02:37:56 23 be submitted. I don't know. It's obviously a typo of some
02:38:00 24 kind.

02:38:00 25 Q. All right. And then it says, "Please refer to the detailed

—Nelson (Recross by Lanier)—

02:38:04 1 instructions." It looks like that might have been a link on
02:38:08 2 completing the refusal to fill form. "Click here and select
02:38:11 3 Archer compliance. This form provides important details of the
02:38:16 4 transaction so that practice compliance can -- may take
02:38:20 5 appropriate follow-up action. In addition, the pharmacist
02:38:22 6 should retain a copy of the prescription in the forged
02:38:28 7 prescription file."

02:38:29 8 Do you see that?

02:38:30 9 A. I do, sir.

02:38:30 10 Q. Then it talks about what to do if you you've dispensed a
02:38:35 11 prescription that you find out later was forged or altered;
02:38:38 12 right?

02:38:41 13 A. Yes, sir.

02:38:42 14 Q. "Situations which could lead to the arrest of patients with
02:38:46 15 legitimate prescriptions."

02:38:47 16 See that?

02:38:48 17 A. I do.

02:38:51 18 Q. "Detention of persons presenting forged or altered
02:38:56 19 scripts."

02:38:56 20 That's just like you can't do that; right?

02:38:59 21 A. I believe that's what the policy said.

02:39:02 22 Q. "Identifying persons who drop off suspected forged or
02:39:06 23 altered prescriptions."

02:39:07 24 You see that as well?

02:39:09 25 A. I do.

—Nelson (Recross by Lanier)—

02:39:12 1 Q. We're almost through with the POM.

02:39:18 2 "Request to file charges; request by law enforcement
02:39:23 3 to fill a forged or altered prescription; HIPAA regulations."

02:39:28 4 You got those sections; right?

02:39:30 5 A. Yes, sir.

02:39:31 6 Q. "Releasing documents to law enforcement; and then home
02:39:35 7 office contact numbers; and frequently asked questions."

02:39:39 8 That's it; right?

02:39:40 9 A. Yeah. I would like to point out that that POM that you
02:39:44 10 have in your hand is the new one that was published in July of
02:39:46 11 2015 that converted the process from the web form to Archer and
02:39:54 12 also took out any verbiage discussing blanket refusal.

02:39:58 13 Q. Okay. If we go back to Plaintiffs' Exhibit 14643, another
02:40:03 14 section that I didn't read to the jury is, "The pharmacist
02:40:06 15 should" -- excuse me, sir.

02:40:11 16 "The pharmacist should return the prescription back to
02:40:13 17 the patient and explain the reason they didn't feel comfortable
02:40:17 18 filling the prescription as written."

02:40:19 19 Do you see that?

02:40:22 20 A. That is correct.

02:40:25 21 Q. Now, that's Walmart policy, but there's -- do you know what
02:40:30 22 the law is on that?

02:40:33 23 A. Well, if it's altered or forged it shouldn't be returned.

02:40:38 24 Q. Yeah. In fact, I don't -- do you know of any law that
02:40:41 25 requires the pharmacist to return it?

—Nelson (Recross by Lanier)—

02:40:46 1 MR. MAJORAS: Objection. Foundation.

02:40:48 2 THE COURT: Overruled.

02:40:51 3 THE WITNESS: I'm not aware of any particular law that
02:40:54 4 says that you're required to return a prescription to someone.

02:40:58 5 BY MR. LANIER:

02:40:59 6 Q. Because if you return a prescription and they just take it
02:41:02 7 to the next place and they know why you didn't fill it, it's
02:41:06 8 kind of like a road map on how to get it filled, isn't it?

02:41:12 9 A. Sir, I don't know. Each pharmacist put their own
02:41:16 10 information and notations on prescriptions when they gave them
02:41:18 11 back -- gave them back to the patient, so. . .

02:41:20 12 Q. Okay. And then last but not least, you were also asked
02:41:25 13 questions by Mr. Majoras about reporting things to the FDA.

02:41:33 14 Do you remember that?

02:41:35 15 MR. MAJORAS: The DEA.

02:41:37 16 BY MR. LANIER:

02:41:38 17 Q. I mean, to the DEA.

02:41:39 18 Do you remember that?

02:41:39 19 A. I do.

02:41:41 20 Q. And this comes back to the exhibit I asked you about in
02:41:44 21 your deposition, Plaintiffs' 20852. It won't be in there
02:41:48 22 because I didn't know it would come up, but this is the one
02:41:53 23 where you said, in essence, y'all were doing that because of
02:41:58 24 the memorandum of agreement that you had with the DEA.

02:42:01 25 Do you remember that?

—Nelson (Recross by Lanier)—

02:42:05 1 A. That was part of our refusal to fill process, yes.

02:42:08 2 Q. Under the DEA agreement, y'all had agreed that you would
02:42:13 3 report those; correct?

02:42:18 4 A. That's my understanding, yes.

02:42:19 5 Q. Because you e-mailed and said that the MOA that requires
02:42:24 6 the reporting of refusals to fill expires in 30 days. You
02:42:30 7 said, "We've not invested a great amount of effort in doing
02:42:33 8 analysis on the data since the agreement's virtually over.
02:42:38 9 Driving sales and patient awareness is a far better use of our
02:42:42 10 market directors' and market managers' time."

02:42:47 11 Do you see that?

02:42:48 12 A. Yes, sir.

02:42:48 13 Q. And we all know what driving sales is, but patient
02:42:51 14 awareness, that's a special term within Walmart, isn't it?

02:42:58 15 A. I don't know if it's unique to Walmart or not.

02:43:00 16 Q. Well, why don't you explain to the jury what you mean by
02:43:03 17 "patient awareness."

02:43:07 18 A. Well, I believe I testified earlier that it has to do with
02:43:13 19 services available by the pharmacy such as immunization.

02:43:20 20 Q. In other words, make the patient aware of what else you
02:43:23 21 could sell to them; right?

02:43:28 22 A. Potentially.

02:43:29 23 Q. Okay.

02:43:30 24 MR. LANIER: Pass the witness. Thank you.

02:43:32 25 Thank you, Your Honor.

—Nelson (Redirect by Majoras)—

02:43:33 1 THE COURT: Okay. Thank you, Mr. Lanier.

02:43:34 2 Mr. Majoras, anything?

02:43:39 3 MR. MAJORAS: Yes, sir.

02:43:39 4 THE COURT: Okay.

02:43:52 5 MR. LANIER: Your Honor, can I give these notes to
02:43:53 6 Mr. Pitts?

02:43:54 7 THE COURT: Yes. Thank you.

02:43:55 8 MR. LANIER: Thank you.

02:44:00 9 MR. MAJORAS: I keep looking at the witness stand but
02:44:02 10 you're on my screen.

02:44:02 11 REDIRECT EXAMINATION OF BRAD NELSON

02:44:05 12 BY MR. MAJORAS:

02:44:05 13 Q. Mr. Nelson, Mr. Lanier showed you POM 1703. Do you know
02:44:09 14 whether POM 1311 is the one that addresses the blanket refusals
02:44:12 15 to fill prior to it being changed in 2017?

02:44:18 16 A. Sir, I don't recall specifically which POM said what
02:44:22 17 because it's been quite a few years and things have moved
02:44:26 18 through that time. I do know that the blanket refusal
02:44:28 19 information was in one of the POMs. I can't attest for sure
02:44:31 20 which one it was in.

02:44:32 21 Q. Let me -- I'm going to do this similar -- similarly to the way
02:44:36 22 Mr. Lanier did it since I don't have a copy in front of me, but
02:44:39 23 I'm going to ask our tech person if he'll put up POM 1311,
02:44:45 24 which is Walmart Exhibit 00558. Put that up on the screen.

02:44:56 25 Sir, do you recognize this as a version of POM 1311?

—Nelson (Redirect by Majoras)—

02:45:01 1 If you look at the date, this one is dated March 2011.

02:45:07 2 A. That certainly looks like one of the formats that we would
02:45:10 3 have used for POMs.

02:45:10 4 Q. Okay. Let's flip to Page 4, please. And see if you can
02:45:24 5 make that a little bit bigger, the box, the gray box.

02:45:29 6 A. I can see it.

02:45:30 7 Q. In this gray box, POM 1311 at that time stated, "Blanket
02:45:34 8 refusals of prescriptions are not allowed. A pharmacist must
02:45:37 9 make an individual assessment of each prescription and
02:45:41 10 determine that it was not issued based on a valid
02:45:45 11 prescriber/patient relationship or for a valid medical reason
02:45:48 12 before refusing to fill."

02:45:49 13 Do you see that, sir?

02:45:51 14 A. I do.

02:45:52 15 Q. And does that refresh your recollection as to where the
02:45:56 16 blanket refusal information was found in the Walmart POMs?

02:46:00 17 A. In 2011, that's where it was at.

02:46:03 18 MR. MAJORAS: Thank you, Your Honor.

02:46:04 19 Thank you, Mr. Nelson.

02:46:07 20 THE COURT: Okay. Mr. Nelson, thank you very much for
02:46:11 21 making yourself available and have a good day, sir. You may be
02:46:16 22 excused.

02:46:17 23 THE WITNESS: Thank you, Your Honor.

02:46:18 24 (Witness excused.)

02:46:18 25 THE COURT: Ladies and gentlemen, we'll take our

02:46:20 1 mid-afternoon break a little early. There's no point in
02:46:24 2 truncating the next witness. So 15 minutes. Usual admonitions
02:46:28 3 apply and then we'll pick up with the plaintiffs' next witness.

02:46:32 4 (Jury excused from courtroom).

02:46:56 5 (Recess was taken from 2:46 p.m. till 3:03 p.m.)

03:03:34 6 COURTROOM DEPUTY: All rise.

03:06:01 7 (Jury returned to courtroom at 3:06 p.m.)

03:06:10 8 THE COURT: Okay. Please be seated, ladies and
03:06:12 9 gentlemen.

03:06:12 10 The next witness is by deposition; is that correct?

03:06:16 11 MR. LANIER: That is correct, Your Honor. My voice is
03:06:18 12 glad too.

03:06:18 13 The next witness, ladies and gentlemen, is Michelle
03:06:22 14 Travassos. She spells it T-r-a-v, as in Victor, -a-s-s-o-s, I
03:06:32 15 think. Michelle Travassos. She also worked for CVS. She was
03:06:39 16 their pharmacy professional services manager.

03:06:46 17 We won't make it through this whole deposition this
03:06:52 18 afternoon. Your Honor has asked me to find a place to stop it
03:06:54 19 at around 5:15. The deposition itself, the play for both
03:06:57 20 plaintiff and defendant, totals out to 2 hours and 45 minutes.
03:07:03 21 Both the witness and Mr. Elsner is the one who does questioning
03:07:07 22 for the plaintiffs. He's not in here today, but you'll see him
03:07:09 23 at times in the back. He's real soft-spoken so you're not
03:07:14 24 allowed to go to sleep. Okay? Just warning you, he's not like
03:07:19 25 me, and he'll just be soft spoken and not -- maybe a nice

Travassos (By Video Deposition)

03:07:25 1 relief for y'all.

03:07:26 2 But with that, Your Honor, we're ready to play the
03:07:29 3 deposition.

03:07:29 4 THE COURT: Okay. Very well. Thank you.

03:07:31 5 MR. LANIER: Thank you, Judge.

03:07:40 6 THE COURT: I don't think the sound's working.

03:07:42 7 MR. LANIER: Yeah. There's no sound, Dan.

03:07:46 8 THE COURT: That will be limited.

03:07:46 9 DEPOSITION TESTIMONY OF MICHELLE LUCY TRAVASSOS

03:07:56 10 Q. Good morning, Miss Travassos.

03:07:59 11 A. Good morning.

03:07:59 12 Q. Can you please state for us your full name?

03:08:02 13 A. Michelle Lucy Travassos.

03:08:03 14 Q. Did you obtain a degree in pharmacy?

03:08:05 15 A. Yes.

03:08:06 16 Q. And where did you obtain that degree from?

03:08:10 17 A. The University of Rhode Island.

03:08:13 18 Q. In what year did you graduate?

03:08:15 19 A. 1990.

03:08:17 20 Q. Did you obtain a license to practice as a pharmacist?

03:08:21 21 A. Yes.

03:08:22 22 Q. Do you maintain that license today?

03:08:25 23 A. Yes.

03:08:28 24 Q. Did you work as a pharmacist?

03:08:31 25 A. Yes.

Travassos (By Video Deposition)

03:08:32 1 Q. Where did you work as a pharmacist?

03:08:36 2 A. I've always worked for CVS Pharmacy.

03:08:40 3 Q. When did you begin working as a pharmacist for CVS?

03:08:45 4 A. Upon graduation, 1990.

03:08:48 5 Q. Over what years did you work as a pharmacist for CVS?

03:08:54 6 A. Well, I'm still a pharmacist, but dispensing pharmacist, if
03:09:00 7 that's what you're referring to, would be from 1990 to 2001.

03:09:09 8 Q. Is 2001 the last time you worked as a pharmacist dispensing
03:09:15 9 medications?

03:09:16 10 A. Yes.

03:09:20 11 Q. Who is your current employer?

03:09:24 12 A. CVS Health still.

03:09:28 13 Q. And in what -- and please explain to me the transition that
03:09:33 14 you made from a pharmacist to your next position at CVS in
03:09:39 15 2001.

03:09:40 16 A. In 2001, I transitioned to be an analyst in health care
03:09:48 17 services at the corporate office.

03:09:50 18 Q. I believe that you said that you were in that position from
03:09:54 19 2001 to roughly 2004 or 2005.

03:09:57 20 What was your next position at CVS?

03:10:01 21 A. I worked in pharmacy operations.

03:10:05 22 Q. And what was your -- and what year did you join pharmacy
03:10:10 23 operations?

03:10:11 24 A. It was continuous so I moved from health care services to
03:10:19 25 pharmacy operations in -- again, I'm estimating maybe 2005.

Travassos. (By Video Deposition)

03:10:22 1 Q. And how long did you serve that role in pharmacy
03:10:24 2 operations?

03:10:24 3 A. Until 2012.

03:10:29 4 Q. Did CVS have a dedicated department or group prior to 2012
03:10:39 5 to field inquiries from pharmacists concerning prescribers of
03:10:44 6 concern or potential evidence of diversion?

03:10:48 7 A. We've always had -- at the time it was loss prevention that
03:10:52 8 would field concerns of diversion, but I am not aware that
03:11:03 9 there was a dedicated group for prescribers at that time.

03:11:07 10 Q. Did you receive any additional training or education when
03:11:15 11 joining the professional practice team?

03:11:22 12 A. Nothing specifically provided. It was more self-research.

03:11:29 13 Q. In 2012, you became a manager in the pharmacy professional
03:11:35 14 services department at CVS; is that right?

03:11:37 15 A. Yes.

03:11:38 16 Q. Was this a new department at CVS in 2012, the pharmacy
03:11:45 17 professional services department?

03:11:48 18 A. I'm not really aware of the year that it was formed. Can't
03:11:57 19 say definitively.

03:11:59 20 Q. Well, when you joined the department, how many people were
03:12:02 21 in it?

03:12:04 22 A. It was probably relatively new because it was three
03:12:11 23 individuals at that time.

03:12:11 24 Q. Okay. And it was Nicci Harrington; is that right?

03:12:16 25 A. She was not in the role yet.

Travassos (By Video Deposition)

03:12:19 1 Q. Was it Papatya Tankut?

03:12:21 2 A. Yes.

03:12:23 3 Q. And was she the head of that department?

03:12:27 4 A. Yes.

03:12:27 5 Q. Did you report to her?

03:12:31 6 A. Yes. It was a brief time, but yes.

03:12:34 7 Q. So it was Papatya Tankut and was it Dani Johnson?

03:12:41 8 A. Yes.

03:12:42 9 Q. And what was Dani Johnson's role?

03:12:46 10 A. She was in analytics.

03:12:49 11 Q. Do you have an understanding of why the pharmacy
03:12:52 12 professional services department was created?

03:13:02 13 A. I don't know specifics about why it was created, but I know
03:13:07 14 that we -- you know, our focus is on controlled substances.

03:13:13 15 Q. What aspect of controlled substances?

03:13:19 16 A. Basically all aspects insofar as dispensing, ordering,
03:13:33 17 prescribing, and safer community aspects.

03:13:40 18 Q. Prior to the creation of the pharmacy professional services
03:13:44 19 department, was there a group or department that was
03:13:49 20 responsible for controlled substances prior to this group?

03:13:51 21 A. It was always the responsibility of the field leaders to
03:13:57 22 kind of monitor, you know, stores' performance.

03:14:05 23 Q. So there was no corporate department at CVS responsible for
03:14:08 24 controlled substances prior to the creation of the pharmacy
03:14:11 25 professional services department; correct?

Travassos (By Video Deposition)

03:14:14 1 A. There were other groups such as the inventory team and
03:14:21 2 pharmacy operations would have, I guess, overseen at a high
03:14:30 3 level in addition to field management.

03:14:32 4 Q. What does the inventory team do?

03:14:34 5 A. They're the department responsible for ordering and in
03:14:40 6 stock, et cetera.

03:14:41 7 Q. So there was -- so there was a corporate office for
03:14:47 8 monitoring and managing general, but there was no department
03:14:52 9 responsible for dispensing, creating safer communities,
03:15:00 10 prescribers at the CVS corporate level before the development
03:15:04 11 of the pharmacy professional services department; correct?

03:15:06 12 A. Those activities would have been monitored by field leaders
03:15:10 13 and pharmacy operations at a higher level, but no specific
03:15:16 14 department.

03:15:17 15 Q. What was your understanding of your job responsibilities
03:15:22 16 when you joined the professional services department, the
03:15:25 17 pharmacy professional services department?

03:15:29 18 A. Basically to learn the operations and support the programs
03:15:37 19 that were currently in place.

03:15:43 20 Q. And what were the programs currently in place in 2012 when
03:15:48 21 you joined?

03:15:51 22 A. Specifically what I remember is the store program,
03:16:00 23 controlled substances dispensing program, prescriber program,
03:16:06 24 and the ordering programs -- holding, canceled and MAQ.

03:16:17 25 Q. So there was the prescriber monitoring program; is that

Travassos (By Video Deposition)

03:16:22 1 right?

03:16:22 2 A. Yes.

03:16:22 3 Q. And that monitored prescribers -- it compared prescribers
03:16:28 4 in particular regions in specialties to one another to
03:16:34 5 determine outlier prescribers, correct?

03:16:36 6 A. There was an algorithm that would identify outliers based
03:16:41 7 on their prescribing, correct.

03:16:43 8 Q. Okay. And then you described the store program. And what
03:16:47 9 was the store program?

03:16:50 10 A. It was -- and still is -- a proactive program that looks at
03:16:59 11 the dispensing of stores over time to I think comparison within
03:17:05 12 a relative geography to identify stores that may fall outside
03:17:12 13 of the mean based upon specific dispensing characteristics.

03:17:16 14 Q. And both those programs started in 2012 and 2013; correct?

03:17:23 15 A. I don't really know when they started because they were
03:17:25 16 already there when I came on board in the summer of 2012.

03:17:34 17 Q. But they were new programs; right? They hadn't been there
03:17:37 18 for years; right?

03:17:38 19 A. I don't believe so. I think you're correct.

03:17:39 20 Q. But at that time in January of 2013 there were potentially
03:17:45 21 three employees in the pharmacy professional services
03:17:48 22 department; is that right, Nicci Harrington, Dani Johnson, and
03:17:52 23 you?

03:17:59 24 A. Yes.

03:17:59 25 Q. And at that time in 2013 CVS had roughly 7,600 stores.

Travassos (By Video Deposition)

03:18:05 1 Does that sound roughly accurate to you?

03:18:07 2 A. I would say so, yes.

03:18:09 3 Q. Okay. So CVS had three dedicated employees in the pharmacy
03:18:13 4 professional services department to monitor 7,600 stores;
03:18:18 5 correct?

03:18:24 6 A. Yes.

03:18:24 7 Q. Why did CVS develop a professional -- a pharmacy
03:18:34 8 professional services department? What was its purpose?

03:18:38 9 A. I can't really say why they started the two because it
03:18:43 10 started before I, you know, came on board.

03:18:49 11 Q. One of the purposes was to try to understand what the DEA
03:18:55 12 was thinking; correct?

03:18:56 13 A. Not to my knowledge.

03:18:57 14 Q. All right. Ms. Travassos, this is a PowerPoint related to
03:19:02 15 the pharmacy professional practice team dated January 2013.

03:19:14 16 A. Yes.

03:19:14 17 Q. Ms. Travassos, if you turn to Page 9 under manager 1, it
03:19:17 18 lists in the second bullet, "Special focus on stores that have
03:19:22 19 a good working relationship with DEA officials to try to
03:19:25 20 understand how the DEA is thinking."

03:19:32 21 Did I read that correctly?

03:19:32 22 A. You did.

03:19:34 23 Q. Why was CVS focused on what the DEA was thinking?

03:19:38 24 A. I can't really say. I don't really remember this document.

03:19:43 25 Q. Well, in part it was to prevent enforcement actions and

Travassos (By Video Deposition)

03:19:47 1 regulatory actions; correct?

03:19:48 2 A. I think it was to have all the information at hand so that
03:19:52 3 we could, you know, provide tools to our pharmacists to support
03:20:00 4 them in their exercise of corresponding responsibility.

03:20:09 5 Q. But with respect to what DEA officials enforcement actions
03:20:13 6 had been undertaken; correct?

03:20:15 7 A. Again, I don't really remember this document to know what
03:20:18 8 the context was.

03:20:19 9 Q. You were aware in 2012 that CVS had enforcement action
03:20:27 10 undertaken against it in Florida related to two of its
03:20:31 11 pharmacies; correct?

03:20:35 12 A. Yes, I was aware of that.

03:20:36 13 Q. And, in fact, the DEA suspended two CVS pharmacies from
03:20:41 14 dispensing controlled substances; correct?

03:20:47 15 A. That is correct.

03:20:48 16 Q. On Page 6, this is the -- this is sort of the working chart
03:20:59 17 of the pharmacy professional practices organization as of
03:21:02 18 January of 2013 and it lists Nicci as the director; correct?

03:21:06 19 A. Yes.

03:21:06 20 Q. And it lists Dani as the analyst?

03:21:10 21 A. Yes.

03:21:10 22 Q. And then you are listed as manager 2 day-to-day; correct?

03:21:15 23 A. Yes.

03:21:16 24 Q. Okay. And at this time all these other positions were
03:21:21 25 vacant; is that right?

Travassos. (By Video Deposition)

03:21:29 1 A. It appears so.

03:21:31 2 Q. And, so, at this time were you then responsible for all of
03:21:42 3 the programs that were being operated out of the pharmacy
03:21:47 4 professional practices organization?

03:21:48 5 A. I assisted in managing them. I wouldn't say that I was the
03:21:54 6 sole manager.

03:21:56 7 Q. And who assisted you with that work?

03:22:02 8 A. It would have been a collaboration of the three of us,
03:22:07 9 Nicci and Dani and myself.

03:22:09 10 Q. Ms. Travassos, each CVS Pharmacy holds a DEA license to
03:22:14 11 dispense controlled substances; right?

03:22:20 12 A. If they're going to dispense controlled substances, that's
03:22:23 13 correct.

03:22:23 14 Q. Okay. And all CVS pharmacies have a license to dispense
03:22:28 15 controlled substances. Is that true?

03:22:32 16 A. To my knowledge, there may be one that does not.

03:22:37 17 Q. I'm just curious now. Which one is that?

03:22:45 18 A. I believe there's a pharmacy in California.

03:22:50 19 Q. Is there a particular reason that that one does not?

03:22:59 20 A. They voluntarily surrendered it.

03:23:05 21 Q. Why?

03:23:11 22 A. It was the result of a DEA visit to the store.

03:23:18 23 Q. And a pharmacy cannot dispense a controlled substance
03:23:24 24 without a license; right?

03:23:26 25 A. Correct.

Travassos (By Video Deposition)

03:23:29 1 Q. What is your understanding of why a license is needed to
03:23:31 2 dispense a controlled substance?
03:23:40 3 A. Controlled substances are more closely regulated, so they
03:23:50 4 require a DEA license.
03:23:53 5 Q. Why are controlled substances more closely regulated?
03:24:06 6 A. Because there is more risk associated with misuse.
03:24:11 7 Q. Risk of what?
03:24:15 8 A. Risk of side effects, diversion.
03:24:24 9 Q. You also -- you also said there was a risk associated with
03:24:29 10 misuse and you included diversion; is that right?
03:24:32 11 A. Correct.
03:24:33 12 Q. What is diversion?
03:24:38 13 A. Diversion is when a prescription drug is used for something
03:24:50 14 it wasn't intended to be used for.
03:24:55 15 Q. Like what?
03:24:58 16 A. Like somebody other than who it was prescribed for takes
03:25:04 17 it.
03:25:07 18 Q. All right. Anything else?
03:25:11 19 A. If it's obtained in fraudulent way.
03:25:24 20 Q. All right. Any other examples of diversion?
03:25:25 21 A. There are -- I'm sure there are others, but theft.
03:25:32 22 Q. Okay. Do you agree that opioids that are diverted pose a
03:25:41 23 danger to the public?
03:25:42 24 A. Anytime an opioid is used for something it's not intended
03:25:47 25 to be used for could be a risk to the public.

Travassos. (By Video Deposition)

03:25:53 1 Q. Does it -- okay. And you said a risk to the public?

03:25:58 2 A. Yes.

03:26:02 3 Q. Do you believe that pharmacies play an important role to
03:26:06 4 detect, report, and prevent diversion of opioids?

03:26:10 5 A. Pharmacists and pharmacy staff are trained to be alert to
03:26:15 6 signs of diversion.

03:26:17 7 Q. And do they -- do they play an important role as the last
03:26:21 8 gatekeepers before a controlled substance is dispensed to a
03:26:29 9 patient?

03:26:29 10 A. Again, they are trained to be alert to signs of diversion
03:26:41 11 to -- to make sure, to the best of their ability, that
03:26:43 12 prescriptions are legitimate.

03:26:46 13 Q. And why is that important?

03:26:47 14 A. Because we wouldn't want controlled substances to be
03:26:55 15 dispensed that weren't intended for legitimate use.

03:27:02 16 Q. And why?

03:27:08 17 A. If they're not dispensed for a legitimate use, there's a
03:27:14 18 risk of it getting into the wrong hands or being used for other
03:27:23 19 purposes.

03:27:26 20 Q. Do they cause a danger to the public?

03:27:31 21 A. Once they leave the pharmacy we don't know what people do
03:27:33 22 with them, but if -- you know, someone who it wasn't intended
03:27:42 23 for would get ahold of it and is using it for something that it
03:27:45 24 wasn't prescribed for them, it could cause a danger for them.

03:27:49 25 Q. Okay. Would you agree with me that pharmacies and

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03:27:52 1 pharmacists are the last line of defense before the dispensing
03:27:57 2 of a controlled substance, like an opioid?
03:28:00 3 A. Yes. Prior to -- as they are the dispensers.
03:28:04 4 Q. And do you agree that it's important for CVS to provide
03:28:07 5 guidance to its pharmacists to identify and prevent diversion?
03:28:10 6 A. There is a lot of training to that matter.
03:28:13 7 Q. But my question, ma'am, is, do you agree that it's
03:28:18 8 important for CVS to identify and prevent diversion?
03:28:26 9 A. I can't speak to CVS. I can speak to what I know in the
03:28:29 10 programs that I've been involved with that we do provide a lot
03:28:32 11 of training.
03:28:33 12 Q. And this is one of your responsibilities at CVS, is to
03:28:37 13 provide guidance from corporate headquarters to CVS pharmacists
03:28:42 14 related to identifying and preventing diversion; right?
03:28:47 15 A. In collaboration with others, yes, I do provide review of
03:28:53 16 trainings and documents to support the pharmacists in their
03:28:59 17 knowledge.
03:29:01 18 Q. And do you think that performing this work is important to
03:29:05 19 public safety and public health?
03:29:07 20 A. I think that all the work we do is important.
03:29:09 21 Q. But is it important to patient safety and public health?
03:29:13 22 A. I would agree with that.
03:29:17 23 Q. Do you agree with me that there's an opioid epidemic in the
03:29:20 24 United States?
03:29:21 25 A. I don't know what the exact definition of epidemic is. I'm

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03:29:27 1 not a medical doctor, but I do agree opioid misuse is a serious
03:29:32 2 issue.

03:29:34 3 Q. And it impacts families in every state and all communities
03:29:38 4 across the country and in Ohio. Would you agree with that?

03:29:40 5 A. I would agree that it's an important issue for everyone to
03:29:44 6 be aware of. Whether it impacts every city within every state,
03:29:52 7 I can't speak to.

03:29:53 8 Q. Would you agree that the abuse of prescription drugs
03:29:57 9 transcends all walks of life and is present in all communities
03:30:00 10 across the country?

03:30:02 11 A. It may have been characterized as such.

03:30:06 12 Q. Do you agree with that?

03:30:08 13 A. Again, I can't say definitively here today that it does,
03:30:13 14 but I know it has a large impact.

03:30:18 15 Q. Ms. Travassos, this is an e-mail you wrote on April 25th,
03:30:22 16 2016; right?

03:30:23 17 A. Yes.

03:30:24 18 Q. Okay. And in the first line of that e-mail it reads: "The
03:30:31 19 abuse of prescription drugs transcends all walks of life and is
03:30:37 20 present in all communities across the nation."

03:30:39 21 Is that what you wrote?

03:30:41 22 A. So that is what is in this document.

03:30:44 23 Q. Okay. And this is the document that you e-mailed; correct?

03:30:49 24 A. Correct.

03:30:50 25 Q. It next states that "The Center for Disease Control and

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03:30:53 1 prevention, the CDC, has determined that the United States is
03:30:58 2 undergoing an epidemic of deaths as the result of prescription
03:31:03 3 drug abuse."

03:31:03 4 Did I read that correctly?

03:31:05 5 A. Yes.

03:31:06 6 Q. Did CVS play a role in the opioid epidemic in Lake and
03:31:18 7 Trumbull counties in Ohio?

03:31:19 8 A. I don't know.

03:31:20 9 Q. Ms. Travassos, I'm going to have you pull back up
03:31:25 10 Exhibit 2 -- oh, no, I'm sorry, Exhibit 1, which is MR902. We
03:31:29 11 looked at this previously. And I'm going to have you turn to
03:31:41 12 Page 14 of the document which relates to your responsibilities.

03:31:44 13 It lists first PMP. What is PMP?

03:31:49 14 A. Prescription monitoring program.

03:31:53 15 Q. And what is a prescription monitoring program?

03:31:57 16 A. It is a statewide, state-run database that is a collection
03:32:06 17 of controlled substance prescriptions that have been dispensed
03:32:11 18 within the state for individuals.

03:32:13 19 Q. All right. And that was part of your responsibility
03:32:15 20 starting in 2013; is that right?

03:32:19 21 A. My responsibility was to provide access to the pharmacists
03:32:27 22 as these various states were putting these PMP programs into
03:32:35 23 place.

03:32:38 24 Q. And we're going to talk about this in more detail, but the
03:32:41 25 access that CVS provided to its pharmacists to access the PMP

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03:32:49 1 system, was that through CVS's computer program or was it an
03:32:53 2 independent search on each state's PMP?

03:32:56 3 A. There would have been a link on the CVS intranet.

03:33:02 4 Q. Okay. And that intranet, is that called RXNet?

03:33:07 5 A. Yes.

03:33:08 6 Q. And, in fact, the only way a CVS pharmacist was permitted
03:33:11 7 to access the PMP was through RXNet; is that right?

03:33:14 8 A. At the time that is correct.

03:33:16 9 Q. Why did CVS want its pharmacists to only access the PMP
03:33:21 10 through RXNet as opposed to just running a search on the
03:33:24 11 internet?

03:33:31 12 A. I don't think they could access the internet from the
03:33:36 13 computer.

03:33:36 14 Q. Okay. So CVS pharmacists didn't have access to the
03:33:39 15 internet in their pharmacy, the only access that was permitted
03:33:43 16 was through CVS's intranet; is that right?

03:33:47 17 A. There were various internet licensing based on RXNet, but
03:33:56 18 insofar as a search for anything, correct, they could not.

03:34:01 19 Q. Do you think it would have been helpful for pharmacists to
03:34:03 20 be able to look up different information about prescribers
03:34:07 21 through the internet as part of their due diligence process?

03:34:11 22 A. I don't know.

03:34:13 23 Q. It's one of the tools that you used in the prescriber
03:34:16 24 monitoring program to access information on prescribers was to
03:34:18 25 look up public information on the internet; correct?

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03:34:22 1 A. Yeah, I only did that for a short while prior to that
03:34:26 2 program transitioning from me.

03:34:31 3 Q. I understand that, but you -- but as part of the prescriber
03:34:34 4 monitoring program, you did access the internet to do searches
03:34:38 5 on prescribers for publicly available information; correct?

03:34:44 6 A. Correct.

03:34:45 7 Q. So it was a useful tool in the prescriber monitoring
03:34:51 8 program to collect information to see if a prescriber had been
03:34:52 9 indicted or if there was some investigation related to them, if
03:34:54 10 there were lawsuits related to their prescribing practices, all
03:35:00 11 of which could be available in public information; right?

03:35:02 12 A. Yes.

03:35:02 13 Q. And so that was information you used in the prescriber
03:35:06 14 monitoring program, but it was not information that the
03:35:09 15 pharmacists could access in the internet at CVS; correct?

03:35:11 16 A. Yes. I don't think they could access it through the
03:35:14 17 computer system.

03:35:15 18 Q. If we go next, under Compliance, it lists RX regulatory
03:35:20 19 audit launch.

03:35:22 20 What is this program?

03:35:27 21 A. This was a program that was related to compliance that
03:35:32 22 pharmacists would have to answer questions.

03:35:36 23 Q. Questions related to what?

03:35:40 24 A. Compliance.

03:35:43 25 Q. Tell me what form these kind of audits would take.

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03:35:46 1 A. It was a computer audit, if you will.

03:35:50 2 Q. So they had to -- was it like a test you had to do online?

03:35:57 3 A. It was not a test. It was asking the state of their
03:36:05 4 pharmacy practice within their store.

03:36:07 5 Q. Okay. And was that done internally by your department or
03:36:12 6 did you use an outside auditor?

03:36:20 7 A. It evolved over time, so both.

03:36:24 8 Q. Please explain to me that evolution.

03:36:30 9 A. Initially --

03:36:32 10 MR. LANIER: Your Honor -- Your Honor, I've asked Dan
03:36:36 11 to pause this.

03:36:38 12 I don't know if there's -- if Mr. Pitts able to take
03:36:43 13 out the empty courtroom seat and make the screen bigger.

03:36:48 14 COURTROOM DEPUTY: I just -- I just texted the IT
03:36:52 15 person because I don't know if I touch something what will
03:36:54 16 happen, so he's going to come up.

03:36:55 17 THE COURT: All right. We'll try and work on it.

03:36:59 18 MR. LANIER: Thank you, Judge.

03:37:00 19 THE COURT: Okay.

03:37:01 20 MR. LANIER: Just trying to see it.

03:37:18 21 THE WITNESS: Initially, pharmacists would do the
03:37:20 22 audit and the pharmacy supervisor would also do the audit. And
03:37:25 23 then over time the pharmacy supervisor's audit it was
03:37:30 24 transitioned to an out outside agency.

03:37:30 25 BY MR. LANIER:

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03:37:35 1 Q. What agency was that?

03:37:39 2 A. Again, that was another evolution. Initially it was two
03:37:42 3 agencies, Crossmark and ASM, and then over time it transitioned
03:37:51 4 to ASM, solely.

03:37:54 5 Q. And when Crossmark and ASM performed an audit, would they
03:37:59 6 actually visit a store to conduct the audit?

03:38:03 7 A. Yes.

03:38:05 8 Q. And would they issue reports as a result of their audits?

03:38:10 9 A. Yes.

03:38:11 10 Q. How often were the audits performed?

03:38:14 11 A. Monthly.

03:38:17 12 Q. And who would have -- who would the reports be sent to when
03:38:22 13 they were completed?

03:38:28 14 A. Let me clarify my last answer because it may have been
03:38:31 15 quarterly, so I don't want to say definitively it was monthly.

03:38:34 16 Q. Okay. I'm going to turn now to the controlled substance
03:38:40 17 dispensing program that you were responsible for at CVS.

03:38:47 18 Is it true that this -- when was this program
03:38:52 19 implemented at CVS?

03:38:53 20 A. It was in place prior to myself joining the team.

03:38:58 21 Q. So in 2012 it was in place; is that right?

03:39:03 22 A. Correct.

03:39:03 23 Q. Okay. And this was a program to identify stores with risky
03:39:12 24 dispensing habits; is that right?

03:39:13 25 A. I wouldn't characterize it that way.

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03:39:17 1 Q. Let me pull out MR83 for me, please.

03:39:23 2 If you see in the -- this is an overview of the
03:39:26 3 programs from February 21st, 2013. If you see under stores, or
03:39:31 4 under Store, sorry, the objective reads, "To proactively
03:39:38 5 identify stores with risky dispensing habits based on multiple
03:39:42 6 red flags across a variety of metrics."

03:39:45 7 Did I read that correctly?

03:39:48 8 A. You've read that correctly.

03:39:50 9 Q. And this program came after the DEA had issued immediate
03:39:57 10 suspension orders that we discussed earlier for two CVS
03:40:02 11 pharmacies in Florida in 2012; correct?

03:40:07 12 A. I'm not aware of that because I'm -- I joined the team, it
03:40:10 13 was already in place, so I don't know where -- when it started,
03:40:14 14 the specific date.

03:40:15 15 Q. Can you describe for me your role with respect to the
03:40:20 16 controlled substance dispensing program?

03:40:21 17 A. My role is to administer the program, to receive the
03:40:31 18 quarterly output and review the stores that were identified and
03:40:41 19 enter them into the program and make -- currently make sure the
03:40:46 20 field leaders -- currently it's DPPLs -- aware of what stores
03:40:51 21 need a visit and the information we need back as a result of
03:40:56 22 that visit.

03:40:58 23 Q. And under the controlled substance dispensing program,
03:41:01 24 there's an algorithm that's run on a quarterly basis on all
03:41:06 25 stores dispensing opioids; correct?

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03:41:08 1 A. Correct.

03:41:11 2 Q. And the recruiter to evaluate high risk stores included
03:41:17 3 volume; is that right?

03:41:18 4 A. I wouldn't characterize them as high risk stores. It's a
03:41:24 5 proactive program meant to identify stores with outlier
03:41:28 6 characteristics of dispensing.

03:41:30 7 Q. Thank you. I misspoke.

03:41:32 8 What I meant to say was that the criteria was to
03:41:35 9 evaluate high risk drugs for each store. And in considering
03:41:40 10 those drugs, it would look at the volume of those drugs; is
03:41:48 11 that right?

03:41:48 12 A. That is one of the metrics that is considered.

03:41:51 13 Q. Okay. And volume is how many drugs; right?

03:41:56 14 A. How many units, yes, correct.

03:42:00 15 Q. Okay. And the high risk drugs included oxycodone and
03:42:05 16 hydrocodone; is that right?

03:42:08 17 A. That is correct.

03:42:11 18 Q. And so CVS recognized that these were high risk drugs that
03:42:15 19 required review of its stores' dispensing practices; correct?

03:42:22 20 A. The program monitors these drugs of concern, if you will,
03:42:35 21 but I can't speak to CVS corporate.

03:42:42 22 Q. Well, you were in charge of the program for CVS; right?

03:42:44 23 A. Yes. I administer the program.

03:42:47 24 Q. You administer the program. You were the person in charge.

03:42:50 25 And in addition to the volume of high risk drugs, the

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03:42:56 1 algorithm also evaluated the share of those high-risk drugs
03:43:01 2 compared to the non-high-risk drugs; correct?

03:43:04 3 A. To overall prescriptions, yes.

03:43:08 4 Q. Okay. And it also measured the growth of those high-risk
03:43:11 5 drugs over time; correct?

03:43:14 6 A. Correct.

03:43:15 7 Q. And would you agree with me that the program was seeking to
03:43:19 8 identify stores with dispensing programs that are -- that are
03:43:24 9 significantly outside of the median?

03:43:28 10 A. It compares stores against other stores within their
03:43:33 11 relative geography to identify those outside of the mean.

03:43:39 12 Q. But significantly outside the median; right?

03:43:41 13 A. It uses statistical -- it uses a statistical method to --
03:43:47 14 to determine what is outside the mean, but I can't speak
03:43:51 15 specifically to that analytical aspect.

03:43:55 16 Q. Well, let's look at MR915, please.

03:43:59 17 We'll mark this as Exhibit 6.

03:44:01 18 And I'm going to focus on the e-mail on the bottom,
03:44:05 19 which is dated October 30th, 2013, from Amanda -- is it Dubois?

03:44:12 20 A. Dubois.

03:44:13 21 Q. Dubois.

03:44:13 22 UNIDENTIFIED SPEAKER: Work on your French.

03:44:13 23 BY MR. ELSNER:

03:44:13 24 Q. I'm going to try to avoid saying that as often as I can.

03:44:24 25 I just asked you if the subject line was updates to

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03:44:27 1 the CSDP for the SOP, correct?

03:44:27 2 A. Yes, correct.

03:44:28 3 Q. Okay. And an SOP is a standard operating procedures;
03:44:34 4 right?

03:44:35 5 A. Correct.

03:44:36 6 Q. And if you go down to the third dash, it says, "Stores
03:44:47 7 significantly outside the median." Correct?

03:44:53 8 A. Correct.

03:44:54 9 Q. Okay. And these are stores with potential high-risk
03:45:00 10 dispensing behavior that enter the CSDP; correct?

03:45:08 11 A. That's how it's characterized here.

03:45:10 12 Q. And, in fact, it says, in the first line, "Hi, Cassandra,
03:45:15 13 please find our process for stores entering the CSDP below."

03:45:20 14 Do you see that?

03:45:21 15 A. Yes.

03:45:22 16 Q. Who is responsible for setting the algorithm to -- so that
03:45:28 17 it identified those significantly outside the median?

03:45:33 18 A. The thresholds were reviewed occasionally to determine if
03:45:42 19 they needed to change. It would have been collaboration.

03:45:46 20 Q. But that decision was the decision CVS made; correct?

03:45:54 21 A. It would have been a decision between analytics, myself,
03:45:59 22 and Nicci would have been aligned.

03:46:01 23 Q. In April of 2013, the controlled substance dispensing
03:46:08 24 program flagged about 56 stores.

03:46:09 25 Does that sound about right?

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03:46:10 1 A. Honestly I couldn't say, I don't remember.

03:46:14 2 Q. Okay. Well, let's look at MR918, and we will mark that as
03:46:19 3 Exhibit 7.

03:46:20 4 Ms. Travassos, this is a CVS memo, and I'm going to --
03:46:27 5 the subject line is "Quarter 2 stores entering the controlled
03:46:31 6 substance dispensing program."

03:46:31 7 Do you see that?

03:46:35 8 A. I do.

03:46:36 9 Q. Okay. And you're listed as the contact person in
03:46:40 10 professional practices; correct?

03:46:42 11 A. Correct.

03:46:43 12 Q. And this is to all senior vice presidents and area vice
03:46:46 13 presidents of CVS?

03:46:51 14 A. Yes.

03:46:52 15 Q. Okay. And it reads in the second paragraph, "Based on the
03:46:56 16 latest controlled substance dispensing review on April 1st,
03:47:01 17 2013, 56 stores have flagged as outliers in their dispensing of
03:47:06 18 one or more of the drugs of concern."

03:47:08 19 Did I read that correctly?

03:47:09 20 A. You did.

03:47:12 21 Q. And at the time, CVS had over 7,600 stores in 2013 as we
03:47:20 22 discussed earlier; correct?

03:47:21 23 A. Correct.

03:47:21 24 Q. So this is a very small number of stores, less than
03:47:25 25 1 percent of CVS stores being flagged through this program;

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03:47:29 1 correct?

03:47:30 2 A. Correct.

03:47:31 3 Q. And the purpose of this program is to ensure that the
03:47:37 4 pharmacy team is following the CVS corporate dispensing
03:47:42 5 guidelines; is that right?

03:47:45 6 A. Yes. It's a program to proactively look at the processes
03:47:57 7 at the store level to make sure there aren't any gaps in
03:48:01 8 processes, and to understand the metrics and what is driving
03:48:05 9 them.

03:48:06 10 Q. And to adhere to the corporate, CVS corporate, dispensing
03:48:11 11 guidelines?

03:48:12 12 A. Yes. That's fair.

03:48:13 13 Q. Okay. And that's what's written in the memo; correct?

03:48:19 14 A. That's correct.

03:48:22 15 Q. Okay. So CVS created this program to measure and make sure
03:48:29 16 that its pharmacists were exercising their corresponding
03:48:33 17 responsibility according to CVS's corporate guidelines;
03:48:36 18 correct?

03:48:37 19 A. The purpose of the program is to -- is one way to have --
03:48:44 20 you know, provide education to the pharmacists and have field
03:48:49 21 management review their -- their processes to ensure they're --
03:48:58 22 they are adhering to corporate dispensing guidelines and their
03:49:02 23 federal corresponding responsibility.

03:49:05 24 Q. So when a store was flagged as an outlier under this
03:49:09 25 program, regional managers and then district managers received

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03:49:14 1 some confidential information concerning the flagged store; is
03:49:17 2 that right?

03:49:17 3 A. Yes. They were made aware.

03:49:20 4 Q. Okay. And they were asked not to forward or distribute
03:49:35 5 this information to others; correct?

03:49:43 6 A. Correct.

03:49:43 7 Q. And the point was to keep that information about that
03:49:45 8 store's dispensing practices confidential; correct?

03:49:59 9 A. I can't speak to why it was advised that we put that in
03:50:05 10 there. That was something that was advised.

03:50:11 11 Q. Okay. And, in fact, the memo reads, "The attached file,"
03:50:15 12 and then it bold it says, "Do not forward or distribute. List
03:50:18 13 each pharmacy identified with high-risk dispensing behavior";
03:50:28 14 correct?

03:50:28 15 A. It does say that, yes.

03:50:30 16 Q. And then attached to this document -- we're not going to go
03:50:32 17 through it necessarily in great detail now, but I just want to
03:50:35 18 make sure we're -- we discuss it. Attached to this is a chart
03:50:43 19 which lists the varies store that were -- that were triggered
03:50:52 20 by the algorithm; correct?

03:50:55 21 A. Yes.

03:51:02 22 Q. Okay. And this is the information that was not to be
03:51:04 23 forwarded or distributed; correct?

03:51:15 24 A. Correct.

03:51:15 25 Q. And for the stores that were entered into the tier 1

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03:51:22 1 program as outliers, they -- the pharmacy supervisors and
03:51:28 2 regional loss prevention managers were required to attend a
03:51:32 3 one-hour webinar; correct?

03:51:36 4 A. They were asked to attend, yes.

03:51:38 5 Q. And then -- and the purpose of this presentation was to
03:51:47 6 instruct the pharmacy supervisors and regional loss prevention
03:51:52 7 managers of the corresponding responsibilities and describe the
03:51:56 8 controlled substances dispensing program; correct?

03:52:00 9 A. The purpose the webinar was to provide education why the
03:52:03 10 store had been identified and what they were to do, correct.

03:52:08 11 Q. And then they were required do a store visit; is that
03:52:12 12 right?

03:52:12 13 A. That's right.

03:52:13 14 Q. Okay. And they were requested to perform a controlled
03:52:27 15 substance audit and education for the store team; is that
03:52:31 16 right?

03:52:31 17 A. That's correct.

03:52:33 18 Q. And then all of this information was due to be reported
03:52:35 19 back to the professional practice team and to you, in fact, in
03:52:39 20 30 days; right?

03:52:41 21 A. Correct.

03:52:43 22 Q. Now, if you look at the attachment to this document again
03:52:47 23 that we looked at, one of the stores about halfway down in the
03:52:51 24 program was from Warren, Ohio, Store 4606.

03:52:56 25 This is Store 4606 in Warren, Ohio.

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03:52:59 1 Do you see that, Ms. Travassos?

03:53:01 2 A. I do.

03:53:04 3 Q. And if we go across the chart, this store was triggered --
03:53:14 4 triggered the algorithm based on its volume of high-risk drugs
03:53:19 5 of hydrocodone; correct?

03:53:22 6 A. Based upon its volume, yes.

03:53:24 7 Q. And the share of hydrocodone compared to non-controlled
03:53:29 8 drugs dispensed from that pharmacy; is that right?

03:53:31 9 A. That's correct.

03:53:33 10 Q. And then there were some red flags that were analyzed as
03:53:37 11 part of this process as well; correct?

03:53:40 12 A. Potential red flags.

03:53:43 13 Q. And for this particular store, it included in this
03:53:50 14 algorithm run age; is that right?

03:53:54 15 A. Yes.

03:53:56 16 Q. And what was the criteria for age under the program?

03:54:05 17 A. The criteria for age is individuals between the ages of 18
03:54:11 18 and 35.

03:54:14 19 Q. And why were individuals between the ages of 18 and 35
03:54:19 20 selected as potential red flags of diversion?

03:54:29 21 A. That was deemed the age group where typically one can be
03:54:37 22 thought of as being relatively healthy.

03:54:40 23 Q. And so if someone was in that age group, presumably they'd
03:54:44 24 be relatively healthy. And if they were getting large numbers
03:54:47 25 of prescriptions for hydrocodone or other opioids, it may be an

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03:54:51 1 indicator of diversion; correct?

03:54:53 2 A. It may be an indicator that it would require follow-up.

03:54:58 3 Q. Because it may be a sign of diversion; correct?

03:55:03 4 A. Potentially that's fair.

03:55:06 5 Q. Okay. And that's what a red flag is; right? It's a
03:55:09 6 potential sign of diversion; correct?

03:55:12 7 A. A red flag is a potential sign of diversion, something
03:55:19 8 requiring following up, yes.

03:55:21 9 Q. Okay. And this particular store in Warren, Ohio, also
03:55:26 10 triggered the algorithm for cocktail; is that right?

03:55:32 11 A. Yes, that is what this says.

03:55:35 12 Q. And how is cocktail defined in the program?

03:55:42 13 A. I don't know the specific definition of cocktail at the
03:55:48 14 time, as it's changed over time.

03:55:52 15 Q. But would you agree that a cocktail would include an
03:55:55 16 opioid, a benzo, and a muscle relaxer?

03:55:59 17 A. I would agree that is definitely a -- considered a
03:56:08 18 cocktail. I'm not sure what the algorithm considered at this
03:56:11 19 time, though?

03:56:11 20 Q. Okay. And is a combination of those drugs together, does
03:56:15 21 that pose a danger to the patient?

03:56:23 22 A. Potential.

03:56:25 23 Q. Why?

03:56:32 24 A. A cocktail or a combination of such medications can have
03:56:38 25 heightened side effects that could be an issue.

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03:56:43 1 Q. Such as?

03:56:44 2 A. I can't say all of them, I'm not a doctor, but respiratory
03:56:50 3 depression, sedation.

03:56:52 4 Q. What about an opioid and a benzo? Would you agree that
03:56:59 5 that presents a respiratory risk to the patient and is a red
03:57:03 6 flag as well?

03:57:07 7 A. I would agree it's a potential red flag, depending on the
03:57:11 8 circumstance.

03:57:13 9 Q. And what about an opioid and a muscle relaxer together? Is
03:57:17 10 that a red flag?

03:57:27 11 A. Potentially.

03:57:28 12 Q. Okay. And so in addition to age and cocktail, this store
03:57:38 13 in Warren, Ohio, also triggered for only controls.

03:57:42 14 What does only controls refer to?

03:57:47 15 A. Only controls refers to individuals that, over the course
03:57:58 16 that the algorithm -- the time period that the algorithm looks
03:58:01 17 at, would have filled only controls. Medications.

03:58:08 18 Q. All right. Now, when this store was identified in the
03:58:16 19 controlled substance dispensing program, would a case be opened
03:58:19 20 related to this store in Archer?

03:58:21 21 A. Yes.

03:58:22 22 Q. Okay. And were you responsible for opening those cases?

03:58:27 23 A. It would have been myself or someone who worked with me.

03:58:33 24 Q. What information would you enter into Archer related to
03:58:36 25 this program and each store in particular?

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03:58:39 1 A. I think it's fair to say it changed over time, but
03:58:48 2 typically you would enter in the store number, what the flag --
03:58:51 3 what drug had flagged in the algorithm, and the characteristics
03:58:57 4 that were considered outliers.

03:59:00 5 Q. Were the results of the audit performed at the store that
03:59:03 6 was part of the program, would that be entered into Archer?

03:59:09 7 A. It would be uploaded into Archer by the loss prevention
03:59:15 8 team.

03:59:18 9 Q. Okay. Any other information entered into Archer? Is there
03:59:23 10 any kind of summary or report that's also entered?

03:59:32 11 A. The pharmacy supervisor would make observations and
03:59:35 12 recommended actions. There were affirmations of corresponding
03:59:45 13 responsibility uploaded, potentially a report related to the
03:59:51 14 store. I'm sorry.

03:59:56 15 Q. I'm sorry. I thought you were finished.

03:59:59 16 Is that it?

04:00:00 17 A. Yes.

04:00:00 18 Q. Okay. That affirmation of corresponding responsibility,
04:00:05 19 who was affirming?

04:00:10 20 A. Each pharmacist.

04:00:11 21 Q. So you had them sign a form that they -- that they what,
04:00:15 22 acknowledge their corresponding responsibility?

04:00:18 23 A. That they understood their corresponding responsibility.

04:00:21 24 Q. Okay. So it's basically they just -- explain to me what's
04:00:26 25 on the form.

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04:00:30 1 A. I don't recall it word for word to say what's in "I
04:00:37 2 acknowledge" form related to their responsibility.

04:00:41 3 Q. Okay. So it's basically: I, whoever the pharmacist, I
04:00:44 4 acknowledge my corresponding responsibility under the
04:00:48 5 Controlled Substances Act, or something like that, and then
04:00:50 6 they sign their name.

04:00:52 7 Is that basically it?

04:00:53 8 A. Yes, they sign it and print their name.

04:00:56 9 Q. As a result of the program, the supervisors would do a
04:01:01 10 one-hour webinar. Then there would be an audit of the store.
04:01:06 11 The pharmacist would promise to follow their corresponding
04:01:09 12 responsibilities and sign an affirmation. The pharmacy
04:01:13 13 supervisor would make some kind of recommendation, and then the
04:01:16 14 file would be closed -- then they would -- the file would be
04:01:19 15 closed; is that right?

04:01:24 16 A. No. At the -- after the LP individual did the audit, the
04:01:31 17 pharmacy supervisor would provide education to the store team,
04:01:38 18 would, you know, review information with the pharmacists, and
04:01:43 19 together with the pharmacy manager, pharmacist in charge, they
04:01:49 20 would come up actionable items that the store could follow to
04:01:53 21 support, you know, the exercise of corresponding responsibility
04:01:59 22 in the form of an action plan. And that information would be
04:02:04 23 forwarded to us to upload into Archer.

04:02:11 24 Q. And then you would upload that into Archer; is that right?

04:02:14 25 A. Correct.

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04:02:14 1 Q. And who has access to Archer at CVS?

04:02:25 2 A. There are various groups that have access to Archer. I
04:02:30 3 couldn't say all of the folks who have access. There are
04:02:35 4 different levels of access.

04:02:37 5 Q. Okay. Well, the pharmacy professional practice team has
04:02:40 6 access; is that right?

04:02:45 7 A. I don't know that everybody has access, but, yes.

04:02:49 8 Q. Okay. Fair enough.

04:02:50 9 What about individual pharmacists in the pharmacy?
04:02:53 10 Would they be able to access the Archer file on their pharmacy?

04:03:00 11 A. No.

04:03:02 12 Q. So the pharmacists wouldn't be able to access the
04:03:06 13 information related to their own pharmacy in the controlled
04:03:11 14 substance dispensing program; correct?

04:03:12 15 A. They had access to the action plan that was created that
04:03:16 16 they would subsequently act on.

04:03:22 17 Q. Did they have access to the audit?

04:03:31 18 A. Not through Archer.

04:03:37 19 Q. Did they have access to the data that triggered the
04:03:40 20 algorithm in the controlled substance dispensing program?

04:03:43 21 A. Only from the standpoint of what the field leader would
04:03:48 22 discuss with them when they were in the store visit.

04:03:52 23 Q. Okay. But they couldn't access through Archer the report
04:03:55 24 on the algorithm and those factors which triggered their
04:04:01 25 entrance into the program through Archer; correct?

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04:04:05 1 A. Correct.

04:04:06 2 Q. I want to turn to MR921, if we could.

04:04:13 3 This is Exhibit 8 to the deposition.

04:04:22 4 Can you describe for me what this report is?

04:04:34 5 A. This report is a dashboard in relation to Store 4606.

04:04:44 6 Q. And who would -- how would this report be generated, and
04:04:50 7 who would have access to it?

04:04:50 8 A. It's generated through an analytical program. Our team
04:04:57 9 would have access to it, and the pharmacy supervisor conducting
04:05:04 10 the visit and the RLPM conducting the visit would have been on
04:05:10 11 the same e-mail that received this dashboard.

04:05:16 12 Q. And this is part of the confidential information that they
04:05:18 13 would have received; is that right?

04:05:20 14 A. Yes.

04:05:22 15 Q. And, so, if we look for Store 4606, it was entered into
04:05:33 16 tier 1 for hydro; is that right?

04:05:37 17 A. Correct.

04:05:38 18 Q. All right. And the store percentile for volume was
04:05:42 19 97 percent; is that right?

04:05:44 20 A. Correct.

04:05:45 21 Q. And the store was triggered by the algorithm because its
04:05:48 22 share for hydrocodone, that opioid, was at the 99 percent; is
04:05:57 23 that right?

04:05:57 24 A. Correct.

04:05:57 25 Q. Okay. And the growth here was at 87 percent; is that

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04:06:05 1 right?

04:06:05 2 A. Correct.

04:06:07 3 Q. Cash was at 91 percent; is that right?

04:06:11 4 A. Correct.

04:06:11 5 Q. What does that mean, 91 percent?

04:06:16 6 A. It's a statistical measurement of comparing this store
04:06:25 7 against other stores within the relative geography. I don't
04:06:34 8 know the exact calculation to come up with the 91 percent.

04:06:39 9 Q. Even if you did, I wouldn't ask you to list it.

04:06:43 10 A. That's good.

04:06:45 11 Q. But it is -- it is measuring and it is calculating what
04:06:50 12 percentage of cash transactions this store had to all other
04:06:56 13 stores in the same region; correct?

04:07:02 14 A. Right. That's not to say that 91 percent of the hydro
04:07:09 15 prescriptions were filled as cash. It's a measurement against
04:07:11 16 the other stores in the relative region.

04:07:13 17 Q. Right. And compared to all of those other stores, this
04:07:16 18 store was in the 91st percentile; correct?

04:07:19 19 A. Correct.

04:07:23 20 Q. Okay. And for age, it was in the 93rd percentile?

04:07:25 21 A. Correct.

04:07:25 22 Q. And for cocktail, in the 99th percentile?

04:07:30 23 A. Correct.

04:07:31 24 Q. And only controls, meaning only hydrocodone prescriptions,
04:07:37 25 was in the 96th percentile?

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04:07:40 1 A. Only controls is 96, correct.

04:07:49 2 Q. I believe I misspoke. I believe at this time in order to
04:07:53 3 qualify for a tier 1 store, the store must be in the 95th
04:07:57 4 percentile for pill volume, share, or relative growth.

04:08:00 5 Does that sound correct to you?

04:08:03 6 A. I don't recall the specific threshold.

04:08:06 7 Q. But these thresholds were set at -- by CVS; correct?

04:08:10 8 A. These thresholds were initially set by AGI, I want to say,
04:08:18 9 and then over time, you know, in collaboration with analytics
04:08:23 10 and senior leaders, they have been adjusted.

04:08:28 11 Q. AGI is an outside consulting group that CVS hired to
04:08:33 12 develop this algorithm; is that right?

04:08:38 13 A. That's correct.

04:08:41 14 Q. And -- but if CVS wanted to do so, they could have lowered
04:08:45 15 the volume share to 75 percent; right?

04:08:50 16 A. In collaboration with analytics and, you know, senior
04:08:56 17 leadership, we could make adjustments if the group felt it was
04:09:02 18 necessary.

04:09:06 19 Q. So you could have -- you could have lowered it to
04:09:11 20 80 percent if everyone agreed; correct?

04:09:14 21 A. Theoretically, yes, we could have.

04:09:24 22 Q. Ms. Travassos, you participated in an action plan for this
04:09:30 23 store, and I want to show you an e-mail related to that
04:09:32 24 investigation. It's MR922, which I'll mark as Exhibit 9.

04:09:37 25 This is an e-mail from -- from you to -- dated

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04:09:43 1 March 21st, 2014, related to Store 4606 and the controlled
04:09:51 2 substance dispensing program follow-up quarter 1.

04:09:53 3 Do you see that?

04:09:59 4 A. Yes.

04:10:01 5 Q. Okay. And it's actually a follow-up to an e-mail that you
04:10:03 6 sent, which is just below it, on March 5th, 2014.

04:10:08 7 Do you see that?

04:10:14 8 A. Yes.

04:10:16 9 Q. And it reads in the second sentence, says, "Part of the
04:10:21 10 documentation, the RLPM," that's the regional loss prevention
04:10:28 11 manager, "listed, he called out two physicians of concern on
04:10:32 12 the audit sheet, Dr. Torres and Dr. Veres."

04:10:36 13 Do you see that?

04:10:36 14 A. I do.

04:10:37 15 Q. "And the comments were that these two physicians were
04:10:40 16 contributing 70, 80 percent of the store's hydrocodone volume."

04:10:43 17 Do you see that?

04:10:45 18 A. Yes.

04:10:49 19 Q. So for this store, the hydrocodone volume that we just
04:10:54 20 looked at was at the 97th percentile of all other stores in
04:10:59 21 that region, and these two prescribers were responsible for 70,
04:11:04 22 80 percent of all of those hydrocodone prescriptions; correct?

04:11:10 23 A. That's -- that is what this e-mail states.

04:11:18 24 Q. And then you wrote that "From a corporate perspective,
04:11:21 25 we'll review the metrics on these physicians," which is a few

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04:11:26 1 sentences down.

04:11:27 2 Do you see that?

04:11:38 3 A. Yes, I see that.

04:11:41 4 Q. And so the store report that we looked at at this point in
04:11:45 5 time had not been shared with the pharmacists; correct?

04:11:52 6 A. I can't say -- I wasn't on the visit -- whether it was
04:11:56 7 shared or not.

04:11:59 8 Q. And CVS corporate didn't give the pharmacists in Store 4606
04:12:05 9 a specific warning regarding filling prescriptions for
04:12:10 10 Dr. Torres and Dr. Veres; correct?

04:12:13 11 A. Typically, during a visit, physicians that contribute the
04:12:19 12 largest quantity of that drug that they're on the visit for
04:12:27 13 would be reviewed, so it may have been covered in that
04:12:36 14 instance, but I wasn't there so I don't know, you know,
04:12:41 15 specifically what was discussed.

04:12:42 16 Q. There was nothing in this information that suggests that
04:12:45 17 the pharmacists were told to be on the lookout for
04:12:48 18 prescriptions from these two prescribers even though they were
04:12:55 19 contributing 70 to 80 percent of the store's total hydro
04:13:01 20 volume?

04:13:01 21 A. They were told that they need to exercise corresponding
04:13:01 22 responsibility with every prescription that they dispense, and
04:13:03 23 if there's any concern that they should refuse to fill.

04:13:06 24 Q. They were told what they were told all of the time by CVS
04:13:10 25 corporate, which is follow your corresponding responsibility

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04:13:13 1 with every single prescription, but they're not given any
04:13:16 2 specific warning here about Dr. Torres or Dr. Veres, it's just
04:13:20 3 the general "follow the corresponding responsibility"; right?
04:13:23 4 A. And the indication that it would be passed to the
04:13:26 5 prescriber team for review.
04:13:28 6 Q. Well, you told the pharmacy supervisor that, but there's no
04:13:34 7 indication that that was conveyed to the pharmacists; right?
04:13:42 8 A. I can't say what was said at the visit, but the pharmacy
04:13:43 9 supervisors were made aware during the webinar that they, you
04:13:47 10 know, they should bubble up any concerns, you know, we -- the
04:13:57 11 prescribe outreach team, monitoring team, would review any
04:14:00 12 prescribers that arose that were of, you know, concern or
04:14:10 13 noteworthy, if you will.
04:14:11 14 Q. Right. But the guidance that you gave in your e-mail to
04:14:14 15 the pharmacy supervisor was general. "It would be good to
04:14:18 16 remind the pharmacists that they must always exercise their
04:14:21 17 professional judgment with each and every prescription they
04:14:24 18 fill, particularly with controlled substances."
04:14:25 19 There's no specific instruction to the pharmacy
04:14:28 20 supervisor to -- to warn the pharmacists about Dr. Torres and
04:14:36 21 Dr. Veres given their high hydrocodone prescribing practices;
04:14:40 22 correct?
04:14:41 23 A. Yeah, I -- I believe the intention was to let them know, to
04:14:45 24 let the pharmacy supervisor know, that these doctors were
04:14:49 25 distributing a high volume, but the pharmacists are responsible

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04:14:54 1 to exercise corresponding responsibility.

04:15:00 2 Q. And there's no instruction from CVS not to fill these
04:15:03 3 prescriptions, and there's no indication that these two
04:15:05 4 prescribers would be suspended by CVS. You were merely going
04:15:08 5 to investigate them; correct?

04:15:09 6 A. This communication was to inform the pharmacy supervisor
04:15:13 7 that these doctors would be passed to the prescriber monitoring
04:15:17 8 team for review, and the pharmacists would need to continue
04:15:25 9 exercising corresponding responsibility.

04:15:28 10 Q. And your follow-up note to the pharmacy supervisor in the
04:15:34 11 e-mail above was, "Once you have a chance to reinforce with the
04:15:39 12 pharmacy team of Store 4606, once confirmed, we'll be able to
04:15:45 13 close out the case"; correct?

04:15:47 14 A. That's what it states.

04:16:00 15 Q. But this is not the first time that Store 4606 had been
04:16:01 16 identified by the controlled substance dispensing program. If
04:16:05 17 we look at MR923, it was in the program earlier; correct?

04:16:33 18 This is Exhibit 10. Mark it for the record, please.

04:16:37 19 Ms. Travassos, this is the analysis of new stores
04:16:40 20 entering the program in 2013.

04:16:42 21 Do you see that?

04:16:47 22 A. I see that.

04:16:48 23 Q. Okay. And if we turn to the second page of this document,
04:16:56 24 in the first two columns, these are new stores entering the
04:16:59 25 CSDP in the second quarter of 2013, drugs of concern. And

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04:17:03 1 under hydrocodone, Store 4606 is listed in both charts. This
04:17:13 2 indicates that this particular store had previously been in the
04:17:16 3 controlled substance dispensing program prior to 2014; correct?

04:17:24 4 A. I don't think I've ever seen this document before, or I
04:17:29 5 don't recollect it, so I don't know exactly how it was
04:17:35 6 prepared.

04:17:36 7 Q. Is that a fair characterization of the document, that Store
04:17:41 8 4606 is listed as a new store entering the CSDP in the second
04:17:44 9 quarter of 2013?

04:17:46 10 A. I would say that's fair.

04:17:48 11 Q. And if you could pull out MR925, please.

04:17:57 12 On the first page of this document, which we'll mark
04:18:00 13 as Exhibit 11, this is a loss prevention store report review
04:18:05 14 for Store 4606 dated July 12th, 2013.

04:18:10 15 Do you see that?

04:18:12 16 A. I do.

04:18:13 17 Q. Okay. And this is that same store in Warren, Ohio?

04:18:19 18 A. Yes.

04:18:19 19 Q. Is this a report of the audit that would be conducted under
04:18:22 20 the controlled substance dispensing program by loss prevention?

04:18:27 21 A. Yes.

04:18:28 22 Q. And so this is an example of the type of audit report that
04:18:31 23 would be conducted as a component of the controlled substance
04:18:36 24 dispensing program; is that right?

04:18:39 25 A. Yes, at the time.

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04:18:40 1 Q. Okay. I'm going to ask you to turn through the document
04:18:47 2 till about the third page in the physical document where it
04:18:50 3 lists prescribers across the top. And the question, in 15, is,
04:18:55 4 "Do you have any concerns with any prescribers for your
04:18:58 5 patients? Who and why?"

04:19:00 6 And the pharmacists list Dr. Veres. This is the
04:19:06 7 pharmacist in charge, the PIC; correct?

04:19:10 8 A. Correct.

04:19:12 9 Q. "High unit amounts for hydrocodone scripts and Dr. Torres.
04:19:18 10 Both offices write scripts for pain meds, hydrocodone, ranging
04:19:22 11 from 90 to 160 tablets."

04:19:24 12 Did I read that correctly?

04:19:26 13 A. Yes.

04:19:28 14 Q. And the RPH1, who is that?

04:19:32 15 A. That would have been another pharmacist on duty at the
04:19:36 16 time.

04:19:36 17 Q. And that pharmacist made the same conclusions, that they
04:19:40 18 were concerned about the prescribers, Dr. Veres and Dr. Torres;
04:19:44 19 correct?

04:19:46 20 A. Those are the doctors that they listed, yes.

04:19:49 21 Q. Okay. And so --

04:19:54 22 MR. WEINBERGER: Is there some way we can expand the
04:19:56 23 screen because these documents are --

04:20:04 24 (Off-record discussion).

04:20:05 25 THE COURT: All right. We're trying to make the

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04:20:07 1 adjustment.

04:20:18 2 MR. WEINBERGER: Is it possible to pause for a minute
04:20:21 3 to see if we can get somebody from IT to --

04:20:25 4 COURTROOM DEPUTY: There's something they need to do
04:20:26 5 downstairs on 15. I just talked to them and they're downstairs
04:20:31 6 now, so I guess if we can pause for a couple minutes. . .

04:20:41 7 THE COURT: Well, we can wait a couple minutes, but if
04:20:45 8 we can't, we'll just continue and do the best we can.

04:20:48 9 MR. LANIER: Your Honor -- Your Honor -- I feel like
04:20:54 10 an adolescent boy with my voice cracking.

04:20:57 11 Your Honor, might this be an opportunity, really brief
04:21:00 12 two minutes for me to just run down the hall and use the
04:21:02 13 restroom?

04:21:03 14 THE COURT: Yep. That's fine. We'll take a short
04:21:05 15 break.

04:21:15 16 We can take a short break and hopefully they'll get
04:21:18 17 this fixed.

04:21:34 18 (Recess was taken from 4:21 p.m. till 4:28 p.m.)

04:28:32 19 MR. WEINBERGER: Thank you, Judge. That's much
04:28:33 20 better.

04:28:34 21 THE COURT: Yeah. This seems better.

04:28:34 22 MR. WEINBERGER: Thank you, Judge.

04:28:35 23 THE COURT: Glad we got it fixed.

04:29:12 24 Okay. We can continue.

04:29:17 25 BY MR. ELSNER:

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04:29:18 1 Q. If you turn to question 16, which is just under this, "Does
04:29:25 2 the store have a do not fill list? Who is on it?"

04:29:29 3 What is a do not fill list?

04:29:36 4 A. That's a characterization of a list that may have been at
04:29:44 5 store level for doctors that pharmacists may not fill for.

04:29:54 6 Q. Okay. So individual stores at this time could create their
04:29:57 7 own lists of prescribers that they would not fill prescriptions
04:30:01 8 for; is that correct?

04:30:06 9 A. The do not fill lists were not necessarily encouraged or
04:30:10 10 directed from corporate at all. Corporate -- or I should say
04:30:16 11 our group, not corporate -- but we advised pharmacists to
04:30:23 12 exercise corresponding responsibility with every prescription
04:30:26 13 that they receive, and if there are concerns, to resolve those
04:30:30 14 concerns.

04:30:32 15 Q. On each individual prescription; correct?

04:30:36 16 A. Correct.

04:30:37 17 Q. And your department did not believe that blanket refusals
04:30:40 18 to fill lists at individual pharmacy were appropriate; right?

04:30:44 19 A. I think so it's fair to say that we -- our group did not
04:30:50 20 want blanket policies in -- you know, at any one particular
04:31:01 21 pharmacy because that would allow pharmacies or anything to be
04:31:06 22 more stringent than, you know, what was CVS policy.

04:31:13 23 Q. So even if the pharmacists in that particular store had
04:31:16 24 determined that a particular pharmacist was operating a pill
04:31:20 25 mill, they couldn't, in your department's view, have a do not

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04:31:25 1 fill list for those prescribers. They needed to evaluate each
04:31:30 2 individual prescription?

04:31:31 3 A. If a pharmacist had knowledge that a prescriber was a pill
04:31:36 4 mill, that would be a concern they wouldn't be able to resolve,
04:31:41 5 so we would expect them to not fill that prescription.

04:31:45 6 Q. But you would not permit them to have a do not fill list
04:31:52 7 with that prescriber's name in it; correct?

04:31:56 8 A. We -- I think it's fair to say that the guidance was is
04:31:59 9 that you should not have a do not fill list, but if you were
04:32:05 10 uncomfortable with a prescription, that -- and you couldn't
04:32:07 11 resolve those concerns, that you couldn't fill.

04:32:12 12 Q. And if we look at Question 22 related to cocktails, once
04:32:22 13 again, Dr. Torres and Dr. Veres were mentioned here as
04:32:30 14 prescribing cocktail drugs of concern to the pharmacists at
04:32:34 15 this store in Warren, Ohio; correct?

04:32:37 16 A. It is characterized that Dr. Torres and Veres are listed to
04:32:42 17 the question about routinely prescribing cocktail.

04:32:48 18 Q. I want to ask you to turn to question 34. "Do a high
04:33:11 19 percentage of patients receiving hydrocodone fill their scripts
04:33:14 20 early?"

04:33:17 21 And the answer was: "15 to 20 percent attempt, but the
04:33:22 22 pharmacy will have a two-day policy on early refills."

04:33:27 23 So this indicates that almost one out of every four
04:33:32 24 hydrocodone prescription, a patient is attempting to fill it
04:33:36 25 before the refill date; correct?

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04:33:40 1 A. What is written here, one pharmacist said 1 in 5, and the
04:33:48 2 other one said 10 to 15 percent.

04:33:50 3 Q. And does that concern you from a compliance perspective,
04:33:54 4 that, you know, 15 percent or 20 percent of the patients with
04:34:02 5 hydrocodone prescriptions were trying to refill their
04:34:04 6 prescriptions early?

04:34:06 7 A. It is something that we would expect the pharmacist to do
04:34:10 8 due diligence on and, you know, resolve any concerns that they
04:34:15 9 may have.

04:34:15 10 Q. Well, I'm asking you, in your position, if this is
04:34:24 11 indication to you that there is potential abuse and diversion
04:34:31 12 occurring for Store 4606, when 97 percent -- where this store
04:34:38 13 is in the 97th percentile for volume for hydrocodone, 99th
04:34:43 14 percentile for share of hydrocodone, and you have patients 15
04:34:49 15 to 20 percent of the time with hydrocodone prescriptions trying
04:34:52 16 to refill those early. Is that indication to you, in your
04:34:58 17 department, that diversion is occurring?

04:35:02 18 A. Again, it's hard to characterize one question from an
04:35:05 19 entire visit. If it was a concern, it would have been
04:35:13 20 addressed.

04:35:14 21 Q. My question is, does it concern you in your position as the
04:35:17 22 head of this program?

04:35:19 23 I mean, you're looking for stores that are outliers.
04:35:22 24 You've identified a store that's an outlier. And then within
04:35:26 25 that store, the patients who are prescribed these pills, one in

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04:35:29 1 five of them is trying to get the prescription filled early.

04:35:32 2 Is that an indication to you of potential diversion?

04:35:37 3 I mean, a red flag of diversion is trying to get a prescription
04:35:40 4 filled early; correct?

04:35:41 5 A. I would say it's, you know, a potential red flag that would
04:35:46 6 need to be resolved.

04:35:50 7 Q. And the reason it's a red flag is that someone coming to
04:35:54 8 the pharmacy to refill a prescription before their day's supply
04:35:58 9 has run out is indication that that person might be abused to
04:36:03 10 the medication, they might be addicted to the medication,
04:36:06 11 and/or they might be diverting the medication; correct?

04:36:09 12 That's -- that is the red flag.

04:36:11 13 A. It really depends on the facts and circumstances. Someone
04:36:14 14 may need their prescription early for legitimate reasons.

04:36:21 15 Q. And I appreciate that. There might be some small
04:36:23 16 percentages of times where, hey, I'm going on a trip and my
04:36:26 17 script's going to come in the day after I leave, but we're
04:36:29 18 talking about 10 to 20 percent of the prescriptions, not 1 or
04:36:35 19 2 percent of the prescriptions; right?

04:36:36 20 A. That is what is characterized here.

04:36:38 21 Q. Ms. Travassos, I want you to pull out MR924, if you would.
04:36:45 22 And we'll mark this as Exhibit 12.

04:36:47 23 So this is the loss prevention store review report
04:36:51 24 dated February 14th, 2014, related to the second time that
04:36:58 25 Store 4606 in Warren, Ohio, was in the controlled substance

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04:37:04 1 dispensing program.

04:37:05 2 Do you see that?

04:37:06 3 A. I do.

04:37:07 4 Q. So this particular store went through the controlled
04:37:12 5 substance dispensing program in 2013, an audit was conducted,
04:37:17 6 the pharmacists were trained, they signed their corresponding
04:37:23 7 responsibility authorizations or attestations, and now they're
04:37:28 8 in the program again for a second time; correct?

04:37:31 9 A. Correct. Correct.

04:37:33 10 Q. Okay. And CVS sent the same regional loss prevention
04:37:38 11 manager to conduct this investigation in 2014, this audit; is
04:37:45 12 that right?

04:37:45 13 A. Yes.

04:37:46 14 Q. Okay. And the questions are going to be largely the same.
04:37:51 15 We're going to look at some of those.

04:37:57 16 I want to turn first to -- in the pharmacy background
04:38:03 17 section, which is either the second or third page of the
04:38:06 18 document.

04:38:12 19 And the third question there is, "Has there been any
04:38:16 20 recent changes to the area, other pharmacies opened or closed?"

04:38:21 21 And the answer here is that "Walgreens has imposed
04:38:25 22 limits on hydrocodone/oxycodone. They can't order once they
04:38:28 23 are at a specific threshold, causing patients to come." I
04:38:34 24 assume to CVS.

04:38:35 25 And then the -- the second pharmacist reaches the same

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04:38:42 1 conclusion.

04:38:42 2 Do you see that?

04:38:45 3 A. I see that.

04:38:47 4 Q. Would you agree with me that if Walgreens was exceeding its
04:38:52 5 threshold limits in this town, and if your store, CVS Store
04:38:59 6 4606, was in the 97th percentile for volume and 99th percentile
04:39:03 7 for share, that this may be an indication that there is
04:39:10 8 diversion occurring within this community?

04:39:13 9 A. No, I can't say that because Walgreens has changed policies
04:39:18 10 over time, not necessarily specific to this area.

04:39:26 11 Q. Understood. But Walgreens has exceeded, apparently,
04:39:33 12 according to your pharmacists at 4606, exceeded its limits on
04:39:37 13 hydrocodone and oxycodone, and that's the reason that more
04:39:40 14 patient are coming to the CVS store.

04:39:42 15 Do you see that?

04:39:43 16 A. I see what's written, but I'm not sure what that
04:39:47 17 characterization relates to.

04:39:51 18 Q. And so if Walgreens had reached its limits in terms of its
04:39:57 19 dispensing of hydrocodone and oxycodone, and -- in this
04:40:03 20 community, and CVS 4606 was in the top 97th percentile for
04:40:09 21 volume and 99 percentile for share of hydrocodone, does it
04:40:15 22 concern you that there may be an oversupply of opioids into
04:40:19 23 this community?

04:40:20 24 A. Again, I wasn't there, but the way I read this is that
04:40:24 25 Walgreens made a change to what they were allowing their

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04:40:29 1 pharmacists to dispense.

04:40:35 2 Q. And as a result, they placed a limit so that there would
04:40:39 3 not be more than the limit of opioids dispensed from their
04:40:44 4 stores in that community; right?

04:40:47 5 A. I can't say to what the change was, but, you know, I wasn't
04:40:51 6 there. I don't know the characterization.

04:40:54 7 Q. Does it concern you, in the pharmacy professional practice
04:40:59 8 department, that you've got Walgreens and CVS, two of the
04:41:05 9 largest pharmacies in the country, both of which are reaching
04:41:09 10 the upper limits of their dispensing of opioids into that
04:41:15 11 community, that there may be an oversupply into that community?

04:41:21 12 A. Again, I wasn't the one conducting the visit, so I can't
04:41:24 13 say what the discussion was behind these comments to understand
04:41:28 14 what they imply.

04:41:32 15 Q. Well, but I'm asking you, having reviewed this from
04:41:37 16 corporate headquarters, is that a concern to you that that may
04:41:42 17 be occurring, which is, frankly -- isn't that the purpose of
04:41:46 18 the controlled substance dispensing program in part, is to make
04:41:49 19 sure that pills aren't being diverted into these communities?

04:41:57 20 A. The purpose of the program is to review the practices at
04:42:00 21 the store to ensure -- to make sure that pharmacists have the
04:42:06 22 tools and the knowledge to exercise corresponding
04:42:10 23 responsibility appropriately.

04:42:12 24 Q. Ms. Travassos, is the purpose of the corresponding
04:42:16 25 responsibility and the corporate guidance that CVS gave to its

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04:42:22 1 pharmacists to help assist in preventing diversion of
04:42:28 2 controlled substances?

04:42:30 3 A. I can tell you that CVS provides training on diversion, but
04:42:40 4 the goal of this program is to identify stores with outlying
04:42:48 5 characteristics of dispensing that -- to ensure correct store
04:42:56 6 processes were in place and pharmacists had the knowledge to
04:43:00 7 appropriately exercise corresponding responsibility.

04:43:05 8 Q. And the training that was given to those pharmacists was
04:43:09 9 training in red flags of indicators of potential diversion;
04:43:14 10 correct?

04:43:17 11 A. Training does provide information on potential red flags.

04:43:22 12 Q. Red flags which were indicators of potential diversion;
04:43:25 13 correct?

04:43:27 14 A. Potential red flags that could be of concern, depending on
04:43:34 15 the circumstance and the facts.

04:43:37 16 Q. The audit report under drugs, hydrocodone, if you move
04:43:44 17 forward a couple more pages, two pages, again highlights the
04:43:58 18 prescribing practices of Dr. Veres and Dr. Torres.

04:44:05 19 Do you see that?

04:44:06 20 A. I see them mentioned on the page, yes.

04:44:09 21 Q. And they're mentioned as prescribers who prescribe the
04:44:13 22 majority of the hydrocodone scripts, in the second column
04:44:19 23 there?

04:44:25 24 A. Yes, I see them mentioned.

04:44:27 25 Q. Okay. And they're also mentioned as prescribers who

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04:44:34 1 routinely prescribe hydrocodone, again, with other drugs, like
04:44:39 2 muscle relaxers; correct?

04:44:40 3 A. I see that documented here.

04:44:43 4 Q. In fact, the RPH1 pharmacist, in response to the question,
04:44:51 5 "What doctors do you verify scripts with because you're
04:44:54 6 concerned with clientele or total quality" -- sorry, "or total
04:45:01 7 quantity of hydrocodone scripts?" responded, "Torres and
04:45:07 8 Veres"; correct?

04:45:11 9 In the second column, Jon.

04:45:14 10 A. That is correct.

04:45:20 11 Q. And if we turn forward to -- under Pharmacist, which is a
04:45:33 12 few pages over, in the third from the bottom, "Does the
04:45:44 13 pharmacist refuse to fill the prescription after the
04:45:46 14 verification process if he or she is uncomfortable with a
04:45:53 15 prescriber's response? "

04:45:56 16 And in the first column it says they refused three on
04:45:59 17 the day of this investigation, "and will not script for
04:46:03 18 oxycodone 30 milligrams or over. They will not carry it."

04:46:06 19 Do you see that?

04:46:09 20 A. I see that written here, yes.

04:46:12 21 Q. Okay. And in the next column it says, "Refuse one to two
04:46:17 22 each day due to early refills or the need to verify through the
04:46:19 23 doctor and then refuse."

04:46:20 24 Do you see that?

04:46:22 25 A. I do.

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04:46:23 1 Q. So according to these pharmacists in the second audit of
04:46:27 2 this particular store, nearly a year later after it first
04:46:31 3 entered the program, they were still refusing to fill around --
04:46:36 4 between one and three prescriptions a day; correct?

04:46:44 5 A. That is what's documented here. I wasn't there to have the
04:46:49 6 conversation, but that -- that is what is documented.

04:46:51 7 Q. And, in fact, the situation was so acute that the
04:46:57 8 pharmacist in charge decided that they will not carry oxycodone
04:47:02 9 over 30 milligrams.

04:47:03 10 Do you see that?

04:47:04 11 A. I see that written here, but, again, I wasn't there,
04:47:08 12 so. . .

04:47:10 13 Q. Well, you keep saying that you weren't there, but this is
04:47:12 14 what was reported to you as part of the program; correct?

04:47:18 15 A. This is what was reported, but I don't recall this specific
04:47:22 16 document.

04:47:24 17 Q. Does it concern you, as the head of this program, that the
04:47:29 18 store that you're investigating had decided on its own that it
04:47:34 19 would refuse to carry prescriptions over 30 milligrams for
04:47:38 20 oxycodone?

04:47:39 21 A. The fact that they're refusing to fill prescriptions shows
04:47:45 22 that they seem to be exercising corresponding responsibility.

04:47:48 23 Q. Do pharmacists have the ability at CVS to decide that
04:47:52 24 they're going to refuse to carry prescription over a certain
04:47:57 25 dosage amount?

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04:47:58 1 A. Currently, no.

04:48:00 2 Q. So I want to have you next turn two pages over to
04:48:11 3 prescribers.

04:48:16 4 And now the answer to the question that was asked in
04:48:18 5 2013, this -- the answer is now changed. "Does the store have
04:48:23 6 a do not fill list? And who is on it?"

04:48:26 7 And the answer now, as opposed to in 2013, is, yes,
04:48:30 8 and it lists these four prescribers.

04:48:33 9 Do you see that?

04:48:35 10 A. Yes.

04:48:36 11 Q. And so do different CVS stores have different do not fill
04:48:41 12 lists in 2013?

04:48:50 13 A. I can't say definitively, you know, what their prevalence
04:48:57 14 was, if it existed.

04:49:00 15 Q. Well, did -- was there a process for CVS pharmacists to
04:49:04 16 inform corporate headquarters that they had created a do not
04:49:08 17 fill list for certain prescribers?

04:49:15 18 A. I'm not aware. The only method I'm aware of is to inform
04:49:23 19 the prescriber monitoring team.

04:49:27 20 Q. And an individual pharmacist could not institute a national
04:49:31 21 decision to block prescribers; correct?

04:49:35 22 A. No, an individual -- well, pharmacists could raise
04:49:43 23 prescriber name to the prescriber monitoring team, and they can
04:49:48 24 refuse to fill from a prescriber if they're not comfortable.

04:49:52 25 Q. CVS pharmacists did not have the discretion to block

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04:49:58 1 prescribers on a national basis; correct?

04:50:01 2 A. They could escalate the prescribers to the prescriber
04:50:04 3 monitoring team and refuse to fill if they were uncomfortable.

04:50:09 4 Q. But they could not block on a national basis a prescriber;
04:50:14 5 correct?

04:50:15 6 A. They could escalate them to the prescriber outreach team.

04:50:18 7 Q. Ms. Travassos, do they have the authority to block them on
04:50:21 8 a national basis; yes or no?

04:50:24 9 A. They could only escalate them to a prescriber outreach
04:50:28 10 program.

04:50:28 11 Q. Okay. And only the CVS governance committee could block a
04:50:32 12 prescriber on a national basis; correct?

04:50:34 13 A. Correct.

04:50:35 14 Q. In fact, CVS developed a policy that prohibited stores from
04:50:41 15 creating blanket refusals to fill lists; correct?

04:50:45 16 A. It wasn't specific to that. It was to any blanket policy.

04:50:51 17 Q. So why don't we turn to MR946, which we'll mark as
04:50:57 18 Exhibit 16.

04:50:59 19 And this is an e-mail from you to Hilary Dudley,
04:51:05 20 cc'ing Nicole Harrington on June 8th, 2016.

04:51:10 21 Do you see that?

04:51:12 22 A. Yes.

04:51:12 23 Q. And then if we turn to the memo which is attached, the
04:51:18 24 subject line reads, "Store-level blanket policies concerning
04:51:22 25 controlled substances."

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04:51:22 1 Do you see that?

04:51:25 2 A. Yes.

04:51:27 3 Q. And then in the paragraph which is underlined in part, it
04:51:31 4 reads, "Stores must only follow company-approved policies.
04:51:39 5 Stores are not authorized to adopt their own store-specific
04:51:44 6 policies without the joint review and approval of their
04:51:46 7 pharmacy supervisor, CVS legal department, and pharmacy
04:51:51 8 professional services department."

04:51:52 9 Did I read that correctly?

04:51:54 10 A. Yes.

04:51:56 11 Q. Then it reads that "stores were directed to immediately
04:52:01 12 discontinue any store-implemented blanket policy pertaining to
04:52:06 13 controlled substances."

04:52:07 14 Correct?

04:52:08 15 A. Correct.

04:52:09 16 Q. And, so, even if a -- and we can -- and we sort of asked
04:52:16 17 this before. But even if a pharmacy knows that a prescriber in
04:52:18 18 their area is operating a pill mill, they must review that
04:52:21 19 prescription to see if it individually, standing alone, could
04:52:24 20 be filled correctly; right?

04:52:26 21 A. Again, if the pharmacist has knowledge that the prescriber
04:52:29 22 is a pill mill, that would be something they couldn't resolve,
04:52:33 23 so they would refuse to fill.

04:52:35 24 Q. But they couldn't have a blanket list in the store to
04:52:39 25 indicate to all the other pharmacists in the store that this

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04:52:44 1 particular prescriber should not -- we should not be filling
04:52:47 2 their prescriptions because they're a pill mill?

04:52:51 3 A. Whether they did or they didn't, I cannot say, I can say
04:52:56 4 that if pharmacists had that knowledge, then they would refuse
04:53:00 5 to fill.

04:53:00 6 Q. Do you know how many CVS stores had these blanket refusals
04:53:05 7 to fill lists?

04:53:09 8 A. No.

04:53:11 9 Q. We looked at one from the audit for the CVS store in
04:53:15 10 Warren, Ohio. Were there other CVS stores in Ohio that had
04:53:19 11 these blanket refusals to fill lists?

04:53:25 12 A. I do not know.

04:53:28 13 Q. Can we turn to -- pull out Exhibit MR947. This will be
04:53:32 14 Exhibit 17.

04:53:35 15 This is an e-mail from a particular CVS store. This
04:53:43 16 is RX07686, and this is a store in Mentor, Ohio. And this is
04:53:53 17 an e-mail to Amy Winchell, and the subject line reads "Pain
04:53:57 18 management doctor."

04:53:58 19 Do you see that?

04:54:01 20 A. Yes.

04:54:03 21 Q. Okay. And the -- and the e-mail reads that "Currently
04:54:18 22 Stores 4351 and 4327 are not filling for him. And I believe
04:54:27 23 that Willoughby Hills has stopped as well. His office exhibits
04:54:31 24 many red flags of a pill mill, such as high quantity, same dose
04:54:34 25 and directions for numerous patients, accepting cash-only

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04:54:37 1 payments."

04:54:39 2 But there -- and she says that "I verified that CVS
04:54:43 3 corporate is currently investigating this practice."

04:54:46 4 There's no -- there's no guidance to the pharmacy
04:54:51 5 about filling prescriptions for this particular doctor, other
04:54:57 6 than CVS corporate has been informed; correct?

04:55:01 7 A. I haven't seen this before. I'm not familiar with it to
04:55:04 8 know, other than what's here, what's said.

04:55:07 9 Q. Was it common practice before CVS instituted this blanket
04:55:11 10 refusal -- you know, this prohibition on blanket refusals to
04:55:15 11 fill for pharmacy to create their own practices to prevent
04:55:22 12 prescriptions being filled for certain prescribers that they
04:55:25 13 believed were operating a pill mill?

04:55:29 14 A. The blanket policy communication, if you will, was not
04:55:34 15 directed at do not fill lists. It was all policies that were
04:55:44 16 at the store level that were more stringent than corporate
04:55:49 17 policy. It wasn't specific to do not fill lists.

04:55:53 18 Q. This particular e-mail to the store in Mentor, if we go to
04:56:03 19 the e-mail that just precedes this one, underneath, this is an
04:56:11 20 e-mail from Amy Winchell to -- I'm sorry, from this particular
04:56:17 21 store in Mentor to Amy Winchell, and it's in reference to
04:56:24 22 Dr. David Demangone.

04:56:26 23 Do you see that?

04:56:28 24 A. Yes.

04:56:29 25 Q. And so the pharmacist had heard that pain management doctor

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04:56:33 1 in our area, that other stores in the area were refusing to
04:56:41 2 fill for him. And that's what prompted this -- this e-mail and
04:56:44 3 the response that this store in Mentor received that there were
04:56:51 4 other CVS stores that were not filling for this doctor as well.

04:56:52 5 Do you see that?

04:56:55 6 A. It doesn't say other CVS stores. It just says other
04:57:01 7 stores, but yes.

04:57:02 8 Q. Her reply says that "Currently, CVS Stores 4351 and 4327
04:57:08 9 are not filling for him. I believe Willoughby Hills has
04:57:12 10 stopped as well."

04:57:12 11 Do you see that?

04:57:13 12 A. I do.

04:57:15 13 Q. Is there a dedicated place at CVS to send complaints of
04:57:20 14 this type, or requests for investigation of this type?

04:57:29 15 A. Yes.

04:57:30 16 Q. What did the policies and procedures say as to what a CVS
04:57:35 17 employee should do with this information?

04:57:43 18 A. They -- that it would probably be escalated to the
04:57:47 19 prescriber monitoring team, but I can't say definitively where
04:57:51 20 she sent it.

04:57:52 21 Q. So was there a policy and procedure at this time in 2014 of
04:57:57 22 where this information was to be sent, to whom to send it?

04:58:10 23 A. I don't know if it was written in policy, but I'm sure it
04:58:13 24 was communicated.

04:58:15 25 Q. Communicated how? And what -- and how was it communicated?

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04:58:21 1 A. I can't say.

04:58:22 2 Q. And who specifically was she supposed to send this
04:58:25 3 information to?

04:58:27 4 A. If there was a concern with a prescriber, it should be sent
04:58:30 5 to the prescriber monitoring team.

04:58:36 6 Q. If you see the response that Ms. Winchell gave to the CVS
04:58:42 7 store in Mentor, if we go down a little bit, Jon, she writes,
04:58:54 8 "These are all things that should be taken into consideration
04:58:57 9 before filling. Can we verify legitimate purpose? Filling
04:59:01 10 these scripts are completely up to you in your professional
04:59:04 11 judgment."

04:59:06 12 Did I read that correctly?

04:59:09 13 A. Yes.

04:59:10 14 Q. So when a particular store reached out to CVS supervisor
04:59:18 15 with the concerns about a particular pill mill doctor, the
04:59:22 16 response was just to use your best judgment; correct?

04:59:26 17 A. It wasn't definitively known as a pill mill doctor. I --
04:59:33 18 I'm not familiar with him or the situation, but she doesn't
04:59:36 19 characterize him as such. She says he has associated red
04:59:42 20 flags, and pharmacists need to review prescriptions and to, you
04:59:47 21 know, take the information that they have, and if there is any
04:59:51 22 concerns, they need to, you know, satisfy those concerns prior
04:59:56 23 to dispensing.

04:59:59 24 Q. Well, she actually writes that "his office exhibits many
05:00:02 25 red flags of a pill mill"; correct?

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05:00:12 1 A. That's what she wrote, but, again, I don't know the
05:00:14 2 characterization because I'm not familiar with this prescriber.

05:00:17 3 Q. So the date of this -- of this document is December 1st,
05:00:23 4 2014. If you could pull out MR948 for me, please. This is
05:00:29 5 Exhibit 18.

05:00:30 6 Ms. Travassos, this is -- Exhibit 18 is interview
05:00:34 7 notes under the prescriber monitoring program related to David
05:00:40 8 Demangone.

05:00:41 9 Do you see that?

05:00:42 10 A. I do.

05:00:42 11 Q. Okay. And this was April 17th, 2015.

05:00:45 12 Do you see the date?

05:00:48 13 A. Yes.

05:00:50 14 Q. This was over four months after the -- Amy Winchell had
05:00:57 15 raised David Demangone to CVS corporate headquarters to ensure
05:01:02 16 that he was being investigated; correct?

05:01:14 17 A. That's when this was drafted, I guess. Yes, that's when
05:01:17 18 the interview was, yep.

05:01:18 19 Q. And the interview notes indicate that Dr. Demangone was
05:01:32 20 seeing -- one second.

05:01:33 21 Under the estimated number of patients the
05:01:38 22 practitioner sees daily, do you see that?

05:01:40 23 This practitioner was seeing between 65 to 70 patients
05:01:46 24 a day?

05:01:47 25 Do you see that?

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05:01:50 1 A. I do see that written.

05:01:52 2 Q. Would that be an indicator to you of a doctor who's
05:01:58 3 potentially engaged as a pill mill?

05:01:59 4 A. I don't know. As not being part of the team, I don't know
05:02:03 5 what usual is.

05:02:06 6 Q. Does it seem high to you?

05:02:08 7 A. Honestly, I can't say without, you know, being part of the
05:02:13 8 team that reviews this on a daily basis.

05:02:19 9 Q. And under Protocols it says, "What is the highest quantity
05:02:22 10 of tablets that you write for oxycodone 30-milligram
05:02:26 11 prescriptions?"

05:02:27 12 And the answer is, "5/325, 553/1050, very high pill
05:02:36 13 volumes."

05:02:36 14 Do you see that?

05:02:39 15 A. I don't know what that's referring to because it would seem
05:02:42 16 to me 5/325 is the strength of oxycodone, so I don't know if
05:02:48 17 that's referring to oxy 30 specifically.

05:02:52 18 Q. But what's written there is very high pill volumes as well;
05:02:57 19 correct?

05:02:59 20 A. That's written there, but I don't know what he's referring
05:03:02 21 to.

05:03:04 22 Q. And the ultimate conclusion was to -- oh, and under the
05:03:08 23 notes on the second page, it says, "Dr. Demangone was obviously
05:03:13 24 disinterested in having this discussion."

05:03:14 25 Do you see that?

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05:03:17 1 A. I do.

05:03:19 2 Q. And the ultimate conclusion, though, was to keep him active
05:03:22 3 and continue to review; correct?

05:03:25 4 A. That's what's marked here.

05:03:27 5 Q. We were looking at the CVS store in Warren, Ohio, that had
05:03:31 6 been flagged on two separate occasions by the controlled
05:03:37 7 substance dispensing program that you ran.

05:03:38 8 It certainly wasn't the only store that was triggered
05:03:42 9 by the algorithm on multiple occasions; correct?

05:03:46 10 A. That's correct.

05:03:47 11 Q. Yes.

05:03:54 12 A. That's what it's saying, but it wasn't that uncommon for a
05:03:57 13 store to flag in a subsequent algorithm because of the amount
05:04:02 14 of time or -- that the algorithm looked back, if you will.

05:04:07 15 MR. WEINBERGER: Your Honor --

05:04:10 16 THE COURT: Hold on a second.

05:04:11 17 MR. WEINBERGER: This might be a good time to break if
05:04:14 18 that's okay.

05:04:14 19 THE COURT: All right. If this is a convenient time.

05:04:16 20 MR. WEINBERGER: Yes, Your Honor.

05:04:17 21 THE COURT: Okay. All right. Ladies and gentlemen,
05:04:23 22 we will break for the evening.

05:04:27 23 Usual admonitions apply. Again, do not encounter,
05:04:33 24 review, read, see, watch anything in any sort of media about
05:04:37 25 this case. Do not do any independent research or anything. Do

05:04:41 1 not discuss the case with anyone, and we'll pick up -- we'll
05:04:46 2 finish this deposition and then have some more plaintiffs'
05:04:49 3 witnesses tomorrow.

05:04:50 4 Have a good evening.

05:04:53 5 (Jury excused from courtroom at 5:04 p.m.)

05:05:24 6 THE COURT: All right. Please be seated for a minute.

05:05:28 7 I don't want to get too far behind in the exhibits, so
05:05:32 8 I guess someone handed me a revised plaintiffs' list for Tasha
05:05:39 9 Polster, so I guess now that -- as I recall, there was an
05:05:46 10 objection to her personnel file, which is 19927. I think first
05:05:53 11 we should only -- we shouldn't admit her whole personnel file.
05:05:59 12 There may have been one or two pages used. So what pages are
05:06:02 13 you offering?

05:06:05 14 MR. LANIER: Your Honor, we would -- we would only
05:06:11 15 offer -- we would only offer the pages we read into the record,
05:06:17 16 and I will commit to you that we can look through that tonight
05:06:21 17 and we'll offer those specific pages in the morning.

05:06:24 18 THE COURT: All right. With that modification, is
05:06:27 19 there any objection?

05:06:30 20 MS. SWIFT: Well, I'd like to -- Kate Swift for
05:06:31 21 Walgreens, Your Honor.

05:06:31 22 THE COURT: Okay.

05:06:33 23 MS. SWIFT: I'd like to take a look at what they --
05:06:35 24 what they propose to offer, and we have other objections too
05:06:37 25 that I've submitted to them in writing. We're happy to talk

05:06:40 1 about those with them before bringing anything to you if that's
05:06:43 2 helpful.

05:06:44 3 THE COURT: All right. Well, see if you -- see if you
05:06:46 4 can work these out and we'll address them in the morning.

05:06:55 5 Did anyone look -- there were two objections that
05:07:02 6 defendants' exhibits with Dr. Alexander. I can't remember
05:07:07 7 even -- all right.

05:07:09 8 MS. SWIFT: Yes, Your Honor.

05:07:09 9 THE COURT: Have you -- have you discussed with the
05:07:11 10 plaintiffs the specific statements that you think are directly
05:07:15 11 contradictory to what Dr. Alexander said in court?

05:07:22 12 MS. FIEBIG: We identified them for the plaintiffs.
05:07:24 13 Have you all had a chance to review?

05:07:25 14 MR. LANIER: The ones that you identified to us seemed
05:07:27 15 to be entirely consistent with what you said. I think you even
05:07:30 16 showed him those and he agreed that he had said that and I
05:07:33 17 didn't see how it was even remotely impeachment.

05:07:36 18 MS. FIEBIG: We do think it's inconsistent,
05:07:38 19 Your Honor. Dr. Alexander testified that overdispensing by
05:07:42 20 pharmacies was one of the fundamental pieces of driving the
05:07:45 21 opioid epidemic, and that was the first time he had offered
05:07:47 22 that testimony when he was in this court.

05:07:49 23 He's testified twice before to Congress, both times
05:07:52 24 about the causes and effects of the opioid epidemic and made no
05:07:56 25 mention of pharmacies or overdispensing. He spoke exclusively

05:08:01 1 about overprescribing, including the many, many, many causes of
05:08:05 2 overprescribing.

05:08:06 3 THE COURT: I think that's correct. What -- what
05:08:09 4 specifically -- hold it.

05:08:10 5 What specific statement are you offering?

05:08:12 6 MS. FIEBIG: So there were five pages from his
05:08:15 7 Congressional testimony that we'd like to offer.

05:08:17 8 THE COURT: We're not going to admit five pages.
05:08:19 9 There may be one statement that is where he says what the
05:08:25 10 causes are. If there's a specific statement that says here are
05:08:28 11 the causes and he doesn't mention pharmacies, I may consider
05:08:32 12 admitting that statement.

05:08:33 13 MS. FIEBIG: Sure.

05:08:34 14 THE COURT: But the rest of it's not inconsistent.

05:08:36 15 MS. FIEBIG: Okay. Well let us offer you a couple
05:08:38 16 then.

05:08:38 17 THE COURT: Well --

05:08:39 18 MS. FIEBIG: In Exhibit 01329, on Page 88, he blames
05:08:46 19 manufacturers, the DEA, and the FDA for the opioid epidemic and
05:08:52 20 makes no mention of pharmacies or overdispensing.

05:08:56 21 THE COURT: All right. Well, let me look at this.
05:08:58 22 Where --

05:09:05 23 MR. WEINBERGER: Your Honor, later on in --

05:09:07 24 THE COURT: I don't even find this. Hold on.
05:09:14 25 Well, this says multifaceted campaigns by

05:09:18 1 pharmaceutical companies. That could be a lot of things.

05:09:21 2 MR. WEINBERGER: Right.

05:09:21 3 THE COURT: I don't see anything inconsistent there.

05:09:23 4 MS. FIEBIG: But it doesn't have to be flatly
05:09:25 5 contradictory.

05:09:26 6 THE COURT: Yes, it does, before I touch it. All
05:09:28 7 right. So, so far I don't see anything that should come in.

05:09:32 8 Again, if you can -- all right. If you can show me
05:09:35 9 something very specifically that directly contradicts what he
05:09:40 10 says, I'll consider admitting it, but so far I haven't seen
05:09:44 11 anything, so. . .

05:09:46 12 MS. FIEBIG: Understood. Thank you, Your Honor.

05:09:48 13 THE COURT: All right. So that takes care of
05:09:52 14 Dr. Alexander.

05:09:53 15 The parties are still working on Tasha Polster. Then
05:09:56 16 we have things with Vernazza, Nelson's new testimony, and
05:10:05 17 Travassos, so the parties can work with that.

05:10:07 18 What's all this?

05:10:14 19 Well, have you gone through these with the plaintiffs,
05:10:14 20 all these exhibits you want in?

05:10:17 21 MS. SWIFT: I've submitted them all twice actually to
05:10:18 22 the plaintiffs, Your Honor. I haven't -- other than what
05:10:22 23 Mr. Weinberger raised yesterday in court with you about the
05:10:24 24 additional good faith dispensing policies, I haven't received
05:10:28 25 any objections from plaintiffs.

05:10:37 1 THE COURT: Well, now they're like 50 or 60 good faith
05:10:42 2 dispensing and target policies. I --

05:10:46 3 MS. SWIFT: They're the same policies that I addressed
05:10:48 4 with her in her direct, Your Honor.

05:10:52 5 MR. WEINBERGER: Well, you pointed her to a box.

05:10:54 6 THE COURT: Yeah.

05:10:54 7 MR. WEINBERGER: You didn't -- you didn't identify on
05:10:57 8 the record what the exhibit numbers were in the box. She --
05:11:03 9 it's not like she went through the box and said these are
05:11:07 10 Exhibits X through Y that I've looked at. The foundation was
05:11:12 11 not laid for that, Your Honor.

05:11:13 12 THE COURT: Well --

05:11:14 13 MS. SWIFT: Your Honor, I --

05:11:15 14 THE COURT: There were some at the beginning and some
05:11:17 15 in the middle and some at the end. I think we should --

05:11:21 16 MS. SWIFT: There were two sets of exhibits. The box
05:11:24 17 that Mr. Weinberger refers to, I believe, was the box of
05:11:28 18 refusals to fill, which we have not offered. You already said
05:11:30 19 that those could not come in through her.

05:11:32 20 The policies were not in a box, and I did go through
05:11:36 21 them with her and I asked her to please look through and
05:11:39 22 confirm that everything in that Redweld was additional good
05:11:43 23 faith dispensing policies and she looked through them carefully
05:11:46 24 and said that they were.

05:11:47 25 MR. WEINBERGER: No, she didn't.

05:11:48 1 THE COURT: Hold it.

05:11:49 2 MR. WEINBERGER: Your Honor --

05:11:49 3 THE COURT: These are over what period of time?

05:11:51 4 MS. SWIFT: They are between 1998 and 2020,

05:11:54 5 Your Honor.

05:11:55 6 MR. WEINBERGER: There's 70 documents in that Redweld,

05:11:57 7 Your Honor, and -- and, look, we're prepared to be -- to

05:12:03 8 withdraw the objection to those, but, again, at every --

05:12:07 9 THE COURT: Yeah, I think you're going to have to

05:12:10 10 reciprocate. Defendants are going to have to reciprocate.

05:12:13 11 MS. SWIFT: All right. We'll continue to talk to the

05:12:15 12 plaintiffs about it.

05:12:16 13 THE COURT: I'm going to keep the same strike zone.

05:12:18 14 So you're going to have to reciprocate probably with some of

05:12:21 15 the ARCOS data and some other things and they'll reciprocate.

05:12:24 16 But, otherwise, if we've got to be strict you're not getting

05:12:28 17 these 70 in.

05:12:29 18 MS. SWIFT: Understood. We'll keep talking to them

05:12:32 19 about it. Thank you, Your Honor.

05:12:32 20 THE COURT: All right. So -- and then hopefully there

05:12:36 21 won't be too much disagreement on the ones with the

05:12:39 22 depositions.

05:12:39 23 Okay. Mr. Lanier, Mr. Weinberger, who are -- after we

05:12:45 24 finish this deposition, which we're mostly through, who do you

05:12:50 25 envision for tomorrow?

05:12:51 1 MR. LANIER: Your Honor, our anticipation tomorrow is
05:12:53 2 to finish with Dr. Keys.

05:12:55 3 THE COURT: Oh, right, right, Dr. Keyes from New York.

05:12:58 4 MR. LANIER: Right. And then we'll be putting on our
05:13:00 5 plaintiffs, and we've got two plaintiffs' witnesses we'll be
05:13:08 6 putting on, and then --

05:13:09 7 THE COURT: And those are --

05:13:11 8 MR. LANIER: Kim Fraser.

05:13:12 9 THE COURT: Right, Ms. Fraser.

05:13:13 10 MR. LANIER: And April Caraway.

05:13:15 11 THE COURT: Right.

05:13:19 12 MR. LANIER: And then, Your Honor, at that point in
05:13:21 13 time, the only witness we have left is Mr. Chunderlik, and he's
05:13:28 14 not available until video on Wednesday morning. So we can rest
05:13:31 15 pursuant to putting him on Wednesday morning, or we can put him
05:13:36 16 on Wednesday and then rest after that, whatever the Court's
05:13:41 17 preference is, but I anticipate us being through with our
05:13:42 18 witnesses probably by about 2:00 or 3:00 tomorrow afternoon.

05:13:46 19 THE COURT: All right. Well, I -- my preference is to
05:13:49 20 keep going and not have a gap, so we'll -- defendants should
05:13:53 21 have their witness -- a witness ready to go when we're done
05:13:56 22 with Caraway, and then we'll have Chunderlik Wednesday morning
05:14:02 23 because that's when that one witness was available.

05:14:07 24 And again, we have -- doesn't really matter who's
05:14:10 25 calling the witnesses, the jury's paying attention to all of

05:14:13 1 them, so the defendant should have a -- one witness available,
05:14:17 2 either live, or if you have a deposition that's easier maybe
05:14:21 3 because we're -- it's a little loose so we don't have someone
05:14:25 4 tied up, you may want to start with a deposition that's --
05:14:27 5 that's fine.

05:14:29 6 MR. LANIER: If -- if --

05:14:30 7 THE COURT: Or two if they're short. I don't know
05:14:32 8 what length these are.

05:14:33 9 MR. LANIER: If we could find out who it is, that
05:14:35 10 would be very helpful to us.

05:14:37 11 THE COURT: Well, defendants want to confer and let
05:14:39 12 plaintiffs know, that's fine.

05:14:42 13 MR. MAJORAS: Your Honor, John Majoras. We were just
05:14:44 14 processing this information as we're hearing it. We'll be
05:14:46 15 happy to --

05:14:47 16 THE COURT: Okay. Okay. Just let them know,
05:14:50 17 Mr. Majoras, who you're going to start off with.

05:14:52 18 MR. MAJORAS: Your Honor, while I'm speaking, I just
05:14:54 19 wanted to note for the record, there -- in Mr. Lanier's
05:14:57 20 questioning of Mr. Nelson, there was some discussion about
05:15:00 21 recently produced documents. There was also come colloquy
05:15:02 22 among counsel in our off-the-record -- I mean, in our sidebar
05:15:05 23 conversation, I just want to note for the record of the 18
05:15:08 24 documents that they used with Mr. Nelson, 12 of them were
05:15:12 25 produced prior to Mr. Nelson's deposition, which was March 23rd

05:15:16 1 of this year, and if you need me to hand something up, I can do
05:15:21 2 that, Your Honor, but I just want to make that record.

05:15:22 3 MR. LANIER: I would love to see that Your Honor
05:15:23 4 because the representation to me from my team was that almost
05:15:27 5 all of those were recently produced documents and so I would
05:15:33 6 like to see that, and I will address it.

05:15:34 7 THE COURT: Well, I think you should discuss that with
05:15:36 8 Mr. Majoras because certainly that was the whole point of my
05:15:39 9 ordering --

05:15:40 10 MR. LANIER: Agreed.

05:15:42 11 THE COURT: -- him to testify and charging the time to
05:15:47 12 Walmart. It wasn't to go into old documents.

05:15:52 13 MR. LANIER: I agree, Your Honor, and the order I put
05:15:52 14 to my team was that those are the documents I wanted and --

05:15:54 15 THE COURT: So -- so, look, he's testified. If it
05:15:56 16 turns out that a number of those documents were -- had been
05:16:03 17 produced, I'm going to shift some of the time back to you.

05:16:05 18 MR. LANIER: Understood, Your Honor.

05:16:06 19 THE COURT: These were documents, so, you know,
05:16:09 20 there's no question they were authentic documents, but if --

05:16:14 21 MR. MAJORAS: Your Honor, Ms. Fumerton will hand that
05:16:17 22 list to Mr. Lanier right now.

05:16:18 23 THE COURT: All right. Why don't you discuss this,
05:16:20 24 and if I need to reallocate some of the time back to the
05:16:23 25 plaintiffs, I'll do so.

05:16:23 1 MR. MAJORAS: Thank you, Your Honor.

05:16:24 2 THE COURT: Simple as that.

05:16:28 3 Because what I had, I kept a good total. We had. . .
05:16:37 4 Mr. Lanier took 2 -- about 2 and a quarter hours and
05:16:44 5 Mr. Majoras, you took a half hour. So if it turns out I've got
05:16:46 6 to shift some of Mr. Lanier's time back to the plaintiffs'
05:16:52 7 column, I mean, I'll do that, if there was documents that had
05:16:55 8 been produced.

05:16:58 9 Okay. Anything else anyone needed to bring up?

05:17:05 10 MR. STOFFELMAYR: Judge, if you have a handy subject
05:17:07 11 to this issue you just raised, do you have the total hour
05:17:10 12 count?

05:17:12 13 THE COURT: Yes, Mr. Stoffelmayr. All right. This is
05:17:22 14 what I had before today. As of Friday -- I'm going to have
05:17:35 15 to -- I have the total, but now I don't -- I don't have the
05:17:39 16 individual totals. I'll have do that. I'll take this home
05:17:46 17 tonight and get it. I have the total, which was about 73 -- 73
05:17:53 18 and a quarter hours, but I realize I don't have the breakdown.

05:17:57 19 MR. STOFFELMAYR: Thank you.

05:17:57 20 THE COURT: I'll give it to you tomorrow. Remind me.

05:18:00 21 MR. STOFFELMAYR: Okay. Thank you very much.

05:18:01 22 THE COURT: Okay. Anything else?

05:18:05 23 All right. I wanted to see a small number of counsel
05:18:13 24 back in my chambers for about 5 minutes, and I want to keep the
05:18:17 25 number down, not to exclude anyone, but I guess I'd like

05:18:21 1 Mr. Lanier and Mr. Weinberger and then two lawyers from each of
05:18:25 2 the four defendants. I'd like to keep it to 10 for obvious
05:18:28 3 reasons.

05:18:38 4 It won't be long. 5 minutes or so.

05:18:48 5 (Proceedings adjourned at 5:18 p.m.)
6

7 **C E R T I F I C A T E**

8 I certify that the foregoing is a correct transcript
9 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

10 /s/ Heather K. Newman
11 HEATHER K. NEWMAN, RMR, CRR

10-25-2021
DATE